



Deposition of:  
**Conf. 30(b)(6) Anthony Campisciano**

*August 30, 2016*

In the Matter of:  
**Ascentium Capital vs. Adams Tank &  
Lift**

**CONFIDENTIAL**

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Page 1

1 1 IN THE UNITED STATES DISTRICT COURT  
2 2 FOR THE MIDDLE DISTRICT OF GEORGIA  
3 3 ALBANY DIVISION  
4 4  
5 5 ASCENTIUM CAPITAL, LLC,  
6 6 Plaintiff, Civil Action File No.  
7 7 1:15-CV-123 (LJA)  
8 8 vs.  
9 9  
10 10 ADAMS TANK & LIFT, INC.;  
11 11 ANDREW J. ADAMS; PHOENIX  
12 12 PETROLEUM, LLC; GREAT CONFIDENTIAL  
13 13 AMERICAN TRAVEL CENTER,  
14 14 LLC; FALCON ENTITY, LLC;  
15 15  
16 16 Defendants.  
17 17  
18 18 30(b)(6) DEPOSITION OF ANTHONY CAMPISCIANO  
19 19 August 30, 2016  
20 20 10:14 a.m. - 5:31 p.m.  
21 21 Baker Donelson  
22 22 3414 Peachtree Road, NE  
23 23 Monarch Plaza, Suite 1600  
24 24 Atlanta, Georgia 30326  
25 25 Shawn E. Fleck, RPR, CCR #2859

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<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 KEVIN STINE</p> <p>4 Attorney at Law</p> <p>5 BAKER, DONELSON, BEARMAN, CALDWELL &amp;</p> <p>6 BERKOWITZ, P.C.</p> <p>7 3414 Peachtree Road, NE, Suite 1600</p> <p>8 Atlanta, Georgia 30326</p> <p>9 (404) 223-2207</p> <p>10 On behalf of the Defendants:</p> <p>11 COLLIER W. MCKENZIE</p> <p>12 Attorney at Law</p> <p>13 JONES CORK, LLP</p> <p>14 435 2nd Street, Suite 500</p> <p>15 Macon, GA 31201</p> <p>16 (478) 745-2821</p> <p>17</p> <p>18 (Pursuant to Article 10(B) of the Rules and</p> <p>19 Regulations of the Georgia Board of Court Reporting,</p> <p>20 a written disclosure statement was submitted by the</p> <p>21 court reporter to all counsel present at the</p> <p>22 proceeding.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. MCKENZIE: Great. And then you can</p> <p>2 swear the witness, and then you can go after.</p> <p>3 THEREUPON:</p> <p>4 ANTHONY CAMPISCIANO</p> <p>5 was called as a witness and, having been first duly</p> <p>6 sworn, was examined and testified as follows:</p> <p>7 MR. STINE: As a housekeeping matter, we</p> <p>8 are here for a 30(b)(6) deposition of the Plaintiff</p> <p>9 Ascentium Capital. The deposition notice had</p> <p>10 several subject matters, some of which Plaintiff</p> <p>11 objected to. Plaintiff's counsel and Defense</p> <p>12 counsel worked on a stipulation to resolve those</p> <p>13 objections. The stipulation I have marked as</p> <p>14 Plaintiff's Exhibit 1.</p> <p>15 (Plaintiff's Exhibit 1 marked.)</p> <p>16 MR. STINE: Under this stipulation, subject</p> <p>17 matter Numbers 5 through 9 of the 30(b)(6)</p> <p>18 deposition notice will not be addressed today, but</p> <p>19 rather will be deemed to have been addressed in the</p> <p>20 previous testimony of Len Baccarro.</p> <p>21 I won't go through the stipulation any</p> <p>22 further. The stipulation speaks for itself, and has</p> <p>23 been made Plaintiff's Exhibit 1.</p> <p>24 We also have a few documents to produce</p> <p>25 today, which Mr. McKenzie and I agreed I would</p>
<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS:</p> <p>2 MR. MCKENZIE: This will be the deposition</p> <p>3 of Tony Campi taken in the case of Ascentium</p> <p>4 Capital, LLC versus Adams Tank &amp; Lift, Inc., Andrew</p> <p>5 Adams, Et Al.; US District Court for the Middle</p> <p>6 District of Georgia, Civil Action Number</p> <p>7 1:15-CV-123.</p> <p>8 This deposition is being taken pursuant to</p> <p>9 notices and agreement of counsel. This deposition</p> <p>10 is also being taken for the purposes of discovery,</p> <p>11 use as evidence as cross-examination, and for any</p> <p>12 and all other allowable purposes under the Federal</p> <p>13 Rules of Civil Procedure.</p> <p>14 If agreeable, all formalities with regard</p> <p>15 to taking the deposition are waived, and all</p> <p>16 objections will be reserved, except as to the form</p> <p>17 of the question and responsiveness of the answer,</p> <p>18 until next use of the testimony.</p> <p>19 Is that agreeable?</p> <p>20 MR. STINE: That's agreeable.</p> <p>21 MR. MCKENZIE: Okay. Do you want to wait</p> <p>22 and see about waiving signature?</p> <p>23 MR. STINE: Yes. At the end of the</p> <p>24 deposition, I'll speak to Mr. Campi about whether to</p> <p>25 reserve signature.</p>	<p style="text-align: right;">Page 9</p> <p>1 introduce at the beginning of the deposition.</p> <p>2 (Plaintiff's Exhibit 2 marked.)</p> <p>3 MR. STINE: Plaintiff's Exhibit 2 is a</p> <p>4 certificate of property insurance for the Cairo</p> <p>5 location, indicating that the insured, Phoenix</p> <p>6 Petroleum, insured the building, the dispensers, and</p> <p>7 the canopy with Ascentium Capital identified as an</p> <p>8 additional loss payee, and so I'm making a copy of</p> <p>9 that as Plaintiff's Exhibit 2. And here's an extra</p> <p>10 copy for you.</p> <p>11 MR. MCKENZIE: Thanks.</p> <p>12 MR. STINE: Next we have a Funding</p> <p>13 Termination Notice and Demand For Payment, a copy of</p> <p>14 which I've made Plaintiff's Exhibit 3.</p> <p>15 (Plaintiff's Exhibit 3 marked.)</p> <p>16 MR. STINE: This is a notice from Ascentium</p> <p>17 Capital to Phoenix Petroleum and the three</p> <p>18 guarantors dated December 2, 2014.</p> <p>19 (Plaintiff's Exhibit 4 marked</p> <p>20 confidential.)</p> <p>21 MR. STINE: Next, we have a credit approval</p> <p>22 for Phoenix Petroleum. This is a report that's been</p> <p>23 generated by the Ascentium Capital credit</p> <p>24 department. Based on the nature of the report, I'm</p> <p>25 going to mark it confidential under the protective</p>

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<p style="text-align: right;">Page 10</p> <p>1 order that Judge Abramson has entered in this case. 2 And that's Plaintiff's Exhibit 4. 3 (Plaintiff's Exhibit 5 marked 4 confidential.) 5 MR. STINE: Plaintiff's Exhibit 5 is a site 6 inspection dated October 6, 2014. We're not certain 7 if this was previously produced, so we're producing 8 it today. 9 (Plaintiff's Exhibit 6 marked 10 confidential.) 11 MR. STINE: And then there's two documents 12 we're producing today that are not necessarily 13 supplemental productions, but are subject -- they 14 fall within the subject matter of the 30(b)(6) 15 deposition notice. One of the subject matters of 16 that notice pertain to situations in which a 17 financing transaction was unwound after the funding 18 from Ascentium Capital. Whether or not -- I believe 19 one of the subject matters addressed those previous 20 situations. 21 And so what we've done is Mr. Campi has 22 come up with a sampling of agreements with other 23 customers where the -- the funding occurred, and 24 then for one reason or another, the customers' 25 transaction with the supplier was cancelled, and the</p> <p style="text-align: right;">Page 11</p> <p>1 deal was unwound, with the funding returned to 2 Ascentium Capital. And because these agreements are 3 unrelated to the Defendants in this case, I'm going 4 to mark Plaintiff's Exhibit 6 as confidential as 5 well. 6 (Plaintiff's Exhibit 7 marked 7 confidential.) 8 MR. STINE: And then I have one final one. 9 Another subject matter of the Defense's 10 30(b)(6) deposition notice requested details on the 11 historical business relationship between Ascentium 12 Capital, and Adams Tank &amp; Lift. 13 So Plaintiff's Exhibit 7 is a spreadsheet 14 that Mr. Campi prepared for his deposition today, 15 which basically lists all of the transactions that 16 Ascentium Capital funded, where Adams Tank &amp; Lift 17 was the vendor. 18 And so he'll be referring to this during 19 the course of the deposition. This is Plaintiff's 20 Exhibit 7. 21 And I have nothing further at this time. 22 Collier, you can proceed with your deposition. 23 EXAMINATION 24 BY MR. MCKENZIE: 25 Q. All right.</p>	<p style="text-align: right;">Page 12</p> <p>1 All right. Mr. Campi, have you ever given 2 a deposition before? 3 A. I have not. 4 Q. You have not? Okay. 5 Well, for her sake, make sure you speak up 6 loudly and clearly. 7 A. Uh-huh. 8 Q. Don't -- try to avoid "uh-huh" and "uh-uh". 9 A. Okay. 10 Q. Say "yes", "no". Try not to nod your head. 11 Try to allow me to finish asking you a question 12 before you start to answer it. 13 A. Understood. 14 Q. And if you don't understand a question I 15 ask, make sure you ask me to repeat it or rephrase 16 it, because if you don't, then I'll assume you 17 understood it. Is that fair? 18 A. Okay. 19 Q. All right? 20 A. Agreeable. 21 Q. So tell me what all you reviewed in 22 preparation for today's deposition document-wise. 23 A. I went over the original complaint filed. 24 Q. Okay. 25 A. I went over the questions that I thought I</p> <p style="text-align: right;">Page 13</p> <p>1 had to be answering today. I went over the three 2 contracts with Phoenix Petroleum, all the documents 3 contained having to do with those contracts, the 4 payment histories of each of the accounts, and I 5 read Mr. Baccarro's deposition from a couple of 6 months ago. 7 I had a meeting with Kevin yesterday. We 8 went over quite a few things. 9 Q. We don't want to talk about that. 10 A. Okay. 11 Q. Okay. Have you spoken to anyone other than 12 Mr. Stine or Ms. Adkins, who works with Mr. Stine, 13 to prepare for today's deposition? 14 A. Yes. Several -- well, my boss, who I 15 report to, Jerry Noon. 16 Q. Okay. What did you and Jerry Noon talk 17 about? 18 A. Just the matter in general, what we think 19 happened, why it happened, and I also spoke with 20 Len, Len Baccarro a couple of times, you know, being 21 that this -- since this case -- 22 Q. Yeah. 23 A. -- went into effect. 24 Q. Do you work in the office with Len 25 Baccarro?</p>
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<p style="text-align: right;">Page 14</p> <p>1 A. I do not. Len works out of the New Jersey 2 office. 3 Q. Okay. 4 A. The main office of Ascentium is in Houston, 5 and I work out of the New York office on Long 6 Island. 7 Q. Gotcha. 8 And where is Jerry Noon's office? 9 A. In Houston. 10 Q. Houston? Okay. 11 A. It's actually Kingwood, a suburb of 12 Houston. 13 Q. Did -- so what did you and Lenny talk 14 about? 15 A. Well, like I said, I read over his 16 deposition. 17 Q. Uh-huh. 18 A. And I spoke to him on the phone. And I 19 just wanted to touch base with him on his testimony, 20 and confirm with him that everything that I was 21 reading was accurate. 22 We went over some of the questions, and I 23 was satisfied that his deposition was right on 24 point. 25 Q. So what -- what things were you satisfied</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And what, as a collector on the account, 2 what does Carlos do? 3 A. Carlos -- once an account goes -- usually 4 falls 20 days behind, Carlos is one of the lower 5 level collectors, and he'll make the initial phone 6 call, or send an e-mail, or send a collection 7 letter, you know, advising the customer that they're 8 behind, asking them when they're going to pay, et 9 cetera, et cetera. And Carlos would usually handle 10 something up to about 60 days past due. 11 Q. Okay. 12 All right. So what is it that you think 13 happened? 14 A. Well, when I first learned of -- learned of 15 the delinquency, I believe it was October 14, is 16 when the account started to fall into arrears. 17 I learned very quickly after that, and I 18 don't remember how I learned it, but I learned that 19 Ataollah, the personal guarantor on the three 20 Phoenix contracts, had tried to commit suicide 21 unsuccessfully. 22 And I believe at the same time I heard 23 that, we were informed that the seven locations went 24 into receivership. One of the banks that financed 25 the mortgages got them, put into receivership</p>
<p style="text-align: right;">Page 15</p> <p>1 about that were right on point? 2 A. Specifically? 3 Q. Uh-huh. 4 A. His -- what happened with the funding that 5 we did with Adams, and why some of the items were 6 either delayed or canceled. 7 I went over that Gmail account with him, 8 which he indicated to me that was the secondary 9 account, a back-up account, in case our regular 10 company e-mail server ever went down. It was an 11 emergency e-mail that he used, he said, that one 12 time. 13 Q. Okay. 14 So what -- what is it that you -- after 15 talking to Jerry, and Len Baccarro, and others, are 16 those the only people you talked to in preparation 17 for today's deposition other than your attorneys? 18 A. Correct. Maybe one of the collectors way 19 back when, you know, when the accounts first went 20 into default. What they learned. You know. 21 Q. And who would that be? 22 A. Carlos Galvez (phonetic) -- 23 Q. Okay. 24 A. -- was the collector on the account, I 25 think, at the time.</p>	<p style="text-align: right;">Page 17</p> <p>1 involuntarily. 2 And then as I started to -- then I got onto 3 the case. I guess it was maybe October, November, 4 or December of '14. 5 Q. Okay. 6 A. I started to correspond with the receiver 7 and/or the receiver's attorney, trying to get the 8 whole story as to what happened. 9 Out of the seven locations, as I'm sure 10 you're aware, we had two. We had two contracts: At 11 Cairo, and one in Jackson. 12 And as time progressed, I just tried to 13 learn as much as I could as to what was going on. 14 And then I started speaking to the bank that put 15 them into receivership to find out what they were 16 doing on their end. 17 Q. And so how did that relate to Ascentium's 18 interest in either of these project sites? The 19 bank. What the bank was doing? 20 A. Well, when we -- when we learned of the 21 receivership, a little time had gone by, and the 22 payments had stopped. And the first thing we wanted 23 to do, at that time, was to engage a company to go 24 out to the sites, and do a site inspection. We 25 wanted to make sure our collateral was on-site, all</p>

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<p style="text-align: right;">Page 18</p> <p>1 the items were -- that was supposed to be there were</p> <p>2 there, and we found out that, at the Jackson</p> <p>3 facility, there was no collateral. And the site</p> <p>4 hadn't been built yet. I believe it was a barn of</p> <p>5 some sort, I believe, the report said.</p> <p>6 Because, from what I understand, they had</p> <p>7 some problems with getting the CO or the certificate</p> <p>8 of occupancy from the town, or whatever. They had</p> <p>9 trouble getting a variance, or whatever. So the</p> <p>10 site, at that time, had not even been started to be</p> <p>11 built.</p> <p>12 Q. Before we get too far into this, I want to</p> <p>13 go ahead and do this.</p> <p>14 I'm going to mark as Defendant's Exhibit 48</p> <p>15 the notice of 30(b)(6) deposition of Ascentium</p> <p>16 Capital, LLC, and on that, Mr. Stine was explaining</p> <p>17 a stipulation related to this --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- 30(b)(6) notice.</p> <p>20 So, you know, my understanding is that</p> <p>21 you'll be testifying as a representative of --</p> <p>22 30(b)(6) representative of Ascentium Capital as to</p> <p>23 Items 1 through 4, and then 10 through 14. Is that</p> <p>24 your understanding?</p> <p>25 A. I wasn't aware of 10 through 14, but -- or</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. -- but were answering to the best of your</p> <p>2 knowledge, you know, as to what you, Tony Campi,</p> <p>3 knows in your individual capacity.</p> <p>4 A. Understood.</p> <p>5 Q. And that's the purpose of that.</p> <p>6 A. Okay. That's fine.</p> <p>7 Q. Okay.</p> <p>8 All right. So earlier you spelled your</p> <p>9 full name for the court reporter; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Just so it's on the record, tell us your</p> <p>12 full name.</p> <p>13 A. Anthony Campisciano, C-A-M-P, as in Peter,</p> <p>14 I-S-C-I-A-N-O.</p> <p>15 Q. And earlier, you indicated you work in</p> <p>16 Ascentium's New York office?</p> <p>17 A. Correct.</p> <p>18 Q. Is that -- do you also live in New York?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay.</p> <p>21 Have you ever been involved in a lawsuit as</p> <p>22 a party?</p> <p>23 A. I have not.</p> <p>24 Q. Have you --</p> <p>25 A. Well, can I clarify that for a second?</p>
<p style="text-align: right;">Page 19</p> <p>1 maybe I just don't remember.</p> <p>2 Q. Yeah.</p> <p>3 MR. STINE: Here, take a look.</p> <p>4 MR. MCKENZIE: Here. And let's mark it,</p> <p>5 and then I'll give it to you. Sorry.</p> <p>6 (Defendant's Exhibit 48 marked.)</p> <p>7 BY MR. MCKENZIE:</p> <p>8 Q. There we go.</p> <p>9 A. Thanks.</p> <p>10 Q. Take a look at that, and make sure we're on</p> <p>11 the same page.</p> <p>12 MR. STINE: Have you had a chance to look</p> <p>13 through?</p> <p>14 THE WITNESS: I'm fine with that. Yes.</p> <p>15 BY MR. MCKENZIE:</p> <p>16 Q. All right. And then I'm going to mark as</p> <p>17 Defendant's Exhibit 49 a notice of deposition to</p> <p>18 you, Tony Campi, individually.</p> <p>19 A. Okay.</p> <p>20 (Defendant's Exhibit 49 marked.)</p> <p>21 BY MR. MCKENZIE:</p> <p>22 Q. And, you know, there will be questions that</p> <p>23 I ask that you might not be answering as the</p> <p>24 30(b)(6) representative of Ascentium --</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Sure.</p> <p>2 A. I'm not sure what you mean. I mean, I</p> <p>3 handle a lot of lawsuits for Ascentium, but I've</p> <p>4 never been deposed, and I've never had to go on</p> <p>5 trial, on the stand, as a witness in a trial.</p> <p>6 Q. Okay.</p> <p>7 A. I handle all the paperwork like behind the</p> <p>8 scenes. Once we file a suit, I try to obtain</p> <p>9 judgment, try to collect the judgment, try to</p> <p>10 recover the collateral, get it sold. That's</p> <p>11 basically the scope of my work.</p> <p>12 MR. STINE: I think he's asking whether</p> <p>13 Tony Campi has ever been a plaintiff or a defendant</p> <p>14 in a civil matter.</p> <p>15 A. Oh, I'm sorry. I misunderstood the</p> <p>16 question. The answer to that is no.</p> <p>17 Q. Okay.</p> <p>18 A. Sorry.</p> <p>19 Q. My next question was going to be the one</p> <p>20 that you asked.</p> <p>21 A. Okay.</p> <p>22 Q. And it sounds like from your response that</p> <p>23 you are involved in some aspect of litigation on</p> <p>24 behalf of Ascentium --</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. -- Capital?</p> <p>2 A. Correct. I'm sorry. I interrupted you.</p> <p>3 Q. No, no. That's fine.</p> <p>4 How -- you know, how often is Ascentium</p> <p>5 involved in litigation annually? Is that a regular</p> <p>6 occurrence or...</p> <p>7 A. It happens quite often. I would say, on</p> <p>8 the average, we may file two to three suits a month</p> <p>9 on loans that have gone bad.</p> <p>10 Q. And how many loans does Ascentium originate</p> <p>11 every year?</p> <p>12 A. I honestly don't know. Number of</p> <p>13 loans-wise, I don't know.</p> <p>14 Q. Okay.</p> <p>15 Do you know the percentage of loans</p> <p>16 Ascentium does in the convenience store/gas station</p> <p>17 market?</p> <p>18 A. If I had to guess, I would probably say</p> <p>19 maybe 20 percent.</p> <p>20 Q. Okay.</p> <p>21 A. That's an educated guess.</p> <p>22 Q. What would you say Ascentium's main target</p> <p>23 market is?</p> <p>24 A. The convenience store would be one target.</p> <p>25 We do a lot of financing for the trucking industry.</p>	<p style="text-align: right;">Page 24</p> <p>1 on, and after we did our site inspections, the</p> <p>2 Jackson facility, we were told that the fuel</p> <p>3 dispensers were in storage someplace. I think it</p> <p>4 was a company called -- I don't recall the name of</p> <p>5 the company now. I'm sorry.</p> <p>6 But we sent our site inspector out to</p> <p>7 inspect the pumps at the storage facility. I think</p> <p>8 it was Jones Petroleum, if I'm not mistaken.</p> <p>9 And he took pictures of the pumps. He</p> <p>10 recorded the serial numbers. And when we got the</p> <p>11 report back, the serial numbers on the dispensers</p> <p>12 did not match up with the serial numbers that we had</p> <p>13 on file.</p> <p>14 And we later learned that those dispensers</p> <p>15 were financed by Providence Capital. The same</p> <p>16 dispensers that we thought we had paid for and that</p> <p>17 were delivered were actually not -- was actually not</p> <p>18 our collateral. It was the collateral of Providence</p> <p>19 Capital.</p> <p>20 There's more, if you want me to --</p> <p>21 Q. Yeah. Keep going.</p> <p>22 A. There's another aspect to it.</p> <p>23 We also learned, during the course of our</p> <p>24 investigation, that part of the Cairo Number 2 --</p> <p>25 Cairo Number 2 contract had been canceled at one</p>
<p style="text-align: right;">Page 23</p> <p>1 Over-the-road truckers, or people that own like --</p> <p>2 like a Little Debbie route, or a Coke route, or</p> <p>3 whatever. You know, we will finance the truck for</p> <p>4 them personally.</p> <p>5 We do business in the hospitality industry.</p> <p>6 We finance furniture for hotels, point-of-sale</p> <p>7 systems for hotels. The -- I'm trying to think of</p> <p>8 the word. The nursing home business, we do quite a</p> <p>9 bit of nursing home business, where if they need</p> <p>10 beds or respirators, or anything having to do with</p> <p>11 the nursing home, if they need to acquire equipment,</p> <p>12 we'll finance nursing homes.</p> <p>13 That's -- those are the main -- probably</p> <p>14 the main ones. And then there's a potpourri of a</p> <p>15 whole bunch of other types of businesses that we'll</p> <p>16 do.</p> <p>17 Q. Let's see. Oh.</p> <p>18 Have you ever been arrested?</p> <p>19 A. I have not.</p> <p>20 Q. Okay. I think that's all -- yeah, that's</p> <p>21 all my background questions.</p> <p>22 Okay. So why did Ascentium file suit</p> <p>23 against Andy Adams &amp; Adams Tank? I mean, why are we</p> <p>24 here?</p> <p>25 A. Well, we learned, as the delinquency went</p>	<p style="text-align: right;">Page 25</p> <p>1 time, and was not to be financed by Ascentium.</p> <p>2 However, we did pay for the collateral on</p> <p>3 that second agreement. On the second Cairo</p> <p>4 agreement.</p> <p>5 Q. And so how, in your view, does Andy Adams</p> <p>6 and Adams Tank fit in the equation?</p> <p>7 A. Well, in my view, we disbursed \$216,000 for</p> <p>8 the Jackson equipment.</p> <p>9 Q. Okay.</p> <p>10 A. And when we learned that Ascentium had zero</p> <p>11 collateral either at the Jackson facility, which</p> <p>12 wasn't opened, or at the storage facility, the light</p> <p>13 bulb went off, well, what was our \$216,000 used for?</p> <p>14 So that's how this whole thing came to</p> <p>15 light against Andy Adams and Adams Tank.</p> <p>16 Q. So was it -- was it Ascentium's belief that</p> <p>17 Andy Adams pocketed \$216,000?</p> <p>18 A. Well, we weren't sure to begin with, but we</p> <p>19 later learned that, I believe, \$100,000 out of that</p> <p>20 \$216,000 Adams Tank gave back to Ataollah or Phoenix</p> <p>21 Petroleum.</p> <p>22 And also a part of that \$216,000 -- I</p> <p>23 forgot the amount -- he told us that he had paid for</p> <p>24 some of the equipment or all of the -- I use the</p> <p>25 word "equipment". Collateral. Same thing. Some of</p>

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<p style="text-align: right;">Page 26</p> <p>1 the collateral or all of the collateral on the Cairo 2 2 agreement. 3 But in our view, we had already paid him 4 for the collateral on the Cairo 2 agreement. So we 5 couldn't understand why he would have taken part of 6 the \$216,000, and said that he was paying for 7 invoices from Cairo 2, when we had already funded in 8 full Cairo 2. 9 So we had the issue of \$100,000 going back 10 to Ataollah, which we felt that should have come 11 back to us, not given to the customer; and why was 12 this other amount of money -- I don't remember the 13 amount. I'm sorry. I think it was \$30,000 or 14 \$40,000. Something like that. Why would he use 15 those funds to pay for equipment that we had already 16 paid for? 17 So that's basically how this whole thing 18 came to light regarding us and AT&amp;L, Adams Tank &amp; 19 Lift. 20 Q. So -- okay. So who -- who is it at 21 Ascentium that decides whether to and when to file a 22 lawsuit? 23 A. I discussed it with my boss, Jerry Noon. 24 Q. Okay. 25 A. But Jerry had -- is the ultimate</p>	<p style="text-align: right;">Page 28</p> <p>1 filed, I believe. 2 Q. Okay. 3 A. The demand letter. 4 Q. Okay. To your knowledge, does Ascentium 5 have any type of written agreement with Adams Tank 6 or Andy Adams? 7 A. No. To my knowledge, no. 8 Q. Okay. So what is it -- what do you base 9 your belief that Adams Tank should have done 10 something to protect Ascentium's interest? I mean, 11 what do you base that belief on? 12 A. Well, I believe that, pertaining to the 13 Jackson facility, he received \$216,000 from us. He 14 knowingly did not deliver the collateral on that 15 contract. And he was, from what I understand, 16 funded on that equipment from Providence. 17 So in my mind, we should have been refunded 18 the entire \$216,000 less whatever however many 19 payments Phoenix had made at the time. Because I 20 believe they did pay. I don't know if it was 10 or 21 12 payments. I'd have to go back and look. 22 But we figured that -- we felt that we 23 should get the \$216,000 back minus the payments that 24 have been made, because no items were delivered. We 25 were not able to place a lien on any collateral</p>
<p style="text-align: right;">Page 27</p> <p>1 decisionmaker. 2 Q. At what point in your investigation, if you 3 recall, did Jerry Noon decide to file a lawsuit 4 against Adams Tank? 5 A. I'm guessing, but I believe it was early in 6 2015. Maybe in the spring of 2015. 7 Q. Why did Ascentium make the decision 8 initially not to file suit against Ataollah 9 Masoodzadehgan? 10 A. Well, from what I can remember, Phoenix was 11 still in receivership. The C-stores or the gas 12 stations were closed. They were not -- they were no 13 longer in operation. And we also had a personal 14 guarantor, Ataollah, which we understood at the time 15 was still in a rehab facility. 16 I believe we may have run -- updated his 17 credit report, and it was not up to snuff. So maybe 18 we figured -- I'm guessing, but maybe we figured at 19 the time we were not going to include him in the 20 lawsuit. 21 I also remembered, once we engaged Kevin's 22 firm way at the beginning, I believe Kevin sent a 23 demand letter to Andy and Adams Tank explaining our 24 position, and asking for our funds back. 25 That was right before the lawsuit was</p>	<p style="text-align: right;">Page 29</p> <p>1 that we had paid for. 2 Q. So -- okay. So tell me, what did Ascentium 3 do to protect its own interest in the collateral in 4 these transactions? 5 MR. STINE: Object to the form. 6 BY MR. MCKENZIE: 7 Q. Okay. What steps did Ascentium take to 8 perfect the security interest in the collateral at 9 each of these sites? 10 A. We filed UCC statements. UCC-1 statements. 11 Q. Okay. And at what point in the transaction 12 did you file the UCC statements? 13 A. It was, I believe, within a day or two 14 after we received the commencement agreements signed 15 by Phoenix. 16 Q. Who -- who at Ascentium, or what 17 department, if there's not a specific person, deals 18 with perfecting security interests on collateral? 19 A. I believe it's our documentation 20 department. Once the documents are received, signed 21 by the customer, and the commencement agreement is 22 received, which basically allows us to start the 23 clock ticking, and start billing for the payments, 24 the people that receive all that -- those documents 25 back, I believe, at that time, filed the UCC.</p>

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1 Q. So when you fund -- when you pay the  
2 customer's borrowed fund, your borrower's borrowed  
3 funds to Adams Tank --  
4 A. Uh-huh.  
5 Q. -- do you believe that that's still money  
6 that's controlled by Ascentium?  
7 MR. STINE: Object to the form.  
8 A. Am I supposed to answer?  
9 Q. Yeah, you can still answer.  
10 A. Okay. When you objected, I wasn't sure.  
11 MR. STINE: No, no, no.  
12 A. Could you repeat the question, please?  
13 Q. Yeah.  
14 MR. STINE: And just for clarification --  
15 BY MR. MCKENZIE:  
16 Q. And maybe it's a bad question.  
17 MR. STINE: -- after I make an objection,  
18 unless I instruct you not to answer --  
19 THE WITNESS: Okay.  
20 MR. STINE: -- anything you're not supposed  
21 to answer. Otherwise, when I'm finished with my  
22 objection, you can either answer the question, or he  
23 will decide to ask a different question.  
24 THE WITNESS: Understood.  
25 MR. STINE: Okay.

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1 BY MR. MCKENZIE:  
2 Q. All right. So you were mentioning the  
3 commencement agreements --  
4 A. Correct.  
5 Q. -- earlier?  
6 A. Uh-huh.  
7 Q. So what is the purpose of a commencement  
8 agreement?  
9 A. The purpose of a commencement agreement is  
10 the customer advising Ascentium that we have the  
11 right to begin billing them for the payments on the  
12 contracts, even though some or all of the collateral  
13 or equipment has still not been received and  
14 installed.  
15 Q. So does that create some sort of duty on  
16 the part of the borrower to still install all that  
17 equipment at the site?  
18 A. I believe it -- it has to do with the  
19 supplier of that. He's the one responsible for  
20 getting the equipment on-site installed, and up and  
21 running.  
22 Q. Does the supplier sign the commencement  
23 agreement?  
24 A. No. The debtor does. In this case Phoenix  
25 Petroleum.

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1 Q. So how would the supplier be responsible  
2 for an obligation under your agreement with the  
3 borrower?  
4 A. I'm not sure I understand what you're  
5 asking.  
6 Q. If Adams Tank didn't sign a commencement  
7 agreement --  
8 A. Right.  
9 Q. -- or a loan agreement --  
10 A. Right.  
11 Q. -- why is Adams Tank obligated to perform  
12 any portion of that contract?  
13 A. Well, you would assume the customer would  
14 advise the supplier, hey, I'm starting to make  
15 payments on this agreement now. Where is my  
16 equipment? When is it coming? When is it going to  
17 be up and running, because I'm paying for something  
18 right now that I don't have yet.  
19 So I'm assuming that the customer and the  
20 supplier would be in communication, and the customer  
21 would be pressing the supplier to deliver the goods.  
22 Q. So if the customer tells the supplier do  
23 not deliver the goods --  
24 A. Okay.  
25 Q. -- what does -- I mean, what is the

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1 supplier supposed to do in that situation, according  
2 to Ascentium?  
3 A. In my belief, the supplier should contact  
4 us, advise us that the customer has canceled the  
5 order, and he should refund the money that we had  
6 already paid him up front, less whatever payments we  
7 might have received from the customer up until that  
8 time.  
9 If he's not supplying equipment, well,  
10 where -- why did we pay money? Where did it go  
11 toward?  
12 Q. Do -- does Ascentium ever deal with  
13 equipment suppliers regarding the specific terms of  
14 the finance agreements?  
15 A. I'm not sure I understand that either. I'm  
16 sorry.  
17 Q. No, that's fine.  
18 Does Ascentium discuss the terms of the  
19 finance agreement that it has with its borrower?  
20 Does it discuss that with the equipment suppliers?  
21 A. As far as what the monthly payments are  
22 going to be, do you mean?  
23 Q. Well, do they discuss what the monthly  
24 payments are going to be?  
25 A. I'm not sure. I know that they discuss --

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<p style="text-align: right;">Page 34</p> <p>1 the supplier will tell us Customer A, B, or C would 2 like \$100,000 worth of this specific equipment. 3 Here are the items they wish to finance. 4 Q. Uh-huh. 5 A. Can you approve the credit? If so -- I'm 6 not sure if they ask at what rate or what the 7 monthly payments will be, but the beginning of the 8 whole process is between the supplier and Ascentium. 9 It's not rare, but in most cases, the 10 supplier -- suppliers, who we deal with, will 11 contact us, and advise us that they have a customer 12 who wishes to get financing. 13 Sometimes we're contacted directly from the 14 customer, and he'll say I already have a supplier 15 picked out, can you finance this equipment for us. 16 So it goes both ways. 17 Q. And so if that occurred in this case, does 18 that change your opinion of Adams Tank's 19 responsibilities or duties you placed on it at 20 Ascentium? 21 A. No. 22 MR. STINE: Object to the form. 23 A. No, not at all. 24 Q. And why is that? 25 A. Well, again, Andy Adams contacted</p>	<p style="text-align: right;">Page 36</p> <p>1 Ascentium who will forward the proceeds to the 2 supplier so the supplier can deliver the items. 3 Q. Okay. 4 Let's see. Did -- do you know if Ascentium 5 conducted any research regarding the -- all the 6 entities owned by Ataollah Masoodzadehgan before 7 attempting to perfect the security interest at the 8 Jackson site? 9 A. Just for the Jackson site specifically? 10 Q. Or Cairo too, but... 11 A. Well, I assume when they did the credit 12 workup on Phoenix -- 13 Q. Uh-huh. 14 A. -- part of that credit analysis showed that 15 he had seven locations. I'm not sure if they knew 16 that the Jackson facility had been built yet or not. 17 MR. STINE: You want to refer to the credit 18 -- 19 MR. MCKENZIE: Yeah, I'll get those. 20 MR. STINE: -- workup that we produced this 21 morning? 22 MR. MCKENZIE: We can go over this, if you 23 want to. 24 A. The CAP report? 25 MR. STINE: (Nods head affirmatively.)</p>
<p style="text-align: right;">Page 35</p> <p>1 Ascentium, and advised us that they had a customer, 2 Phoenix Petroleum, who wished to finance the gas 3 dispensers or whatever; here's the amount; can you 4 approve the credit; please get back to us with the 5 approval; and sent out the documents for signature 6 to Phoenix. 7 Q. So if that was not the case, in this 8 situation, does that change your opinion? 9 A. I'm not sure I understand what you're 10 asking. 11 Q. If that's -- if that's not the case in this 12 situation -- 13 A. So what would be the case? 14 Q. Well, let's say the -- if the borrower 15 approached Mr. Baccarro directly, does that change 16 your opinion about the equipment supplier's role in 17 the transaction? 18 A. No, not at all. 19 Q. Okay. And so what I asked earlier was why 20 is that? Why does it not change your opinion? 21 A. It doesn't -- in my opinion, it doesn't 22 matter who contacts Ascentium for the financing. 23 We have a customer that needs financing for 24 specific equipment, we have a supplier who can 25 supply and install that equipment, and we have</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. MCKENZIE: 2 Q. Is this (indicating) -- 3 A. Yeah. That's the CAP. That's the credit 4 write-up, basically. 5 Q. All right. That is Plaintiff's Exhibit 4, 6 so we can -- you can walk me through this document. 7 A. Before I do, I must tell you I'm not in the 8 credit area. 9 Q. That's -- 10 A. I mean, I've seen these before, but I do 11 not do credit work, and I don't do the workup on a 12 document -- 13 Q. Okay. 14 A. -- such as this. 15 Q. But you reviewed those in preparation for 16 today? 17 A. Yes. 18 Q. And informed yourself regarding the credit 19 approval procedures and balances? 20 A. I actually just glanced at this yesterday. 21 I didn't go through it, because I wasn't sure that 22 this was going to be part of today's deposition. 23 Q. Okay. Well, we'll walk through it, and see 24 what you know. 25 A. Okay.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. All right. So what -- let's go and -- at 2 what point in the transaction is the credit approval 3 presentation prepared? 4 A. When the application for credit is 5 received. It's usually given to Ascentium or 6 Ascentium's credit department by the salesperson. 7 Q. Okay. 8 A. In this case, Len Baccarro. 9 Q. All right. If you look where it says 10 equipment location, it states 2679 Highway 16 West, 11 Jackson, Georgia. Is that correct? 12 Middle of the first section. 13 A. Oh, here it is. That's the -- this is the 14 credit for Jackson. Correct. 15 Q. Okay. Do you know anything about the -- if 16 you go up a little bit where it says "Quality Rating 17 5", do you know what that means? 18 A. I do not. 19 Q. Where it says "Industry Risk 2", do you 20 know what that means? 21 A. I do not. 22 Q. Where it says "Dependency 3", do you know 23 what that means? 24 A. I do not. 25 Q. And then where it says "Equipment Risk 2",</p>	<p style="text-align: right;">Page 40</p> <p>1 But if I had to guess, I would say that -- 2 no, that's not right. I can't guess. I really 3 don't know. I apologize. 4 MR. MCKENZIE: I guess that's all I have 5 for Tony on this, because I don't know if he really 6 knows enough to talk about it. So we might have to 7 address that. I don't think it's worth going 8 through it in detail today. 9 BY MR. MCKENZIE: 10 Q. Let's talk about Plaintiff's Exhibit 3. 11 A. Do you want this back, or is that ours? 12 Q. You can just put it right here 13 (indicating). 14 A. Okay. 15 Q. Let's talk about Plaintiff's Exhibit 3. 16 A. Uh-huh. 17 Q. Wait. I gave you my copy. 18 A. Okay. 19 Q. I'll give you the official one. Sorry. 20 All right. So is this something that you 21 know about? 22 A. I am familiar with this type of letter. 23 Yes. 24 Q. All right. Let's -- at what point in the 25 collection process does -- well, first off, is this</p>
<p style="text-align: right;">Page 39</p> <p>1 do you know what that means? 2 A. I do not. I can take a guess as to what 3 some of them mean, if you want me to, but I do not 4 specifically know what that stands for. 5 Q. Yeah. You can guess. 6 A. Well, in my opinion, industry risk, it's 7 probably on a scale of one to five, with one being 8 the best, and five being the worst. So I would 9 guess that a two, being that we do quite a bit of 10 business with these types of Phoenix deals, that 11 would be less of a risk, industry-wise, than, let's 12 say, financing a Tasty Freeze or something in the 13 middle of Idaho. 14 Quality rating, I can't even take a guess. 15 I don't know what dependency is either. 16 "Equipment Risk 2", I would also assume 17 that would be favorable, as opposed to unfavorable, 18 because we do quite a few contracts where there are 19 gas dispensers, such as the Phoenix deal. 20 So we probably have a pretty good comfort 21 level on something Equipment Risk 2 and Industry 22 Risk 2. 23 Q. All right. And then it says "Referral 24 Source Retail". What does that mean? 25 A. I am not sure. I don't know.</p>	<p style="text-align: right;">Page 41</p> <p>1 a standard, like, a form letter? 2 A. Yes, it is. 3 Q. Okay. And at what point in the collection 4 process with Phoenix Petroleum, Ataollah, Falcon 5 Entity, and Great American did this letter come into 6 play? 7 A. Well, it's dated early December, so it 8 appears to be two months after the default date, 9 which I believe is October of 2014, on all three 10 contracts. 11 This letter has to do with the fact that we 12 had already funded 90 percent of the Jackson deal. 13 That's the \$216,000 to Adams. And we still had 10 14 percent to fund on that deal to make -- to go up to 15 the \$240,000. 16 And this is a notice to the customer, that 17 because of the default on their contract, we were 18 terminating the remaining 10 percent of the Jackson 19 deal, which I believe was \$24,000, if my math is 20 correct. And also advising them that the contracts 21 were past due, and it gives the past due amounts. 22 Q. And are these -- just so I -- for the 23 record's sake, are these -- you know, it says 24 payments under EFA 2118850, EFA 2116122, and EFA 25 2118557.</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Uh-huh.</p> <p>2 Q. What -- what do those designations</p> <p>3 represent?</p> <p>4 A. Those are the agreement numbers for each of</p> <p>5 the three contracts. Cairo 1, Cairo 2, and Jackson.</p> <p>6 Q. Okay. And is this letter something that</p> <p>7 goes out after -- earlier, you mentioned a guy named</p> <p>8 Carlos --</p> <p>9 A. Galvez.</p> <p>10 Q. -- Galvez?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is the initial collector?</p> <p>13 A. Correct.</p> <p>14 Q. Is this like a next step letter, or is this</p> <p>15 something Carlos produces?</p> <p>16 A. No. Carlos does not produce this or sends</p> <p>17 it out. My boss, Jerry Noon, does, but Carlos,</p> <p>18 again, once he sees a red flag that there's</p> <p>19 something going on -- it's not a normal delinquency,</p> <p>20 let's say, where the customer's having cash flow</p> <p>21 issues, and is going to be paying a month or two</p> <p>22 late every month for a while until they get back on</p> <p>23 their feet.</p> <p>24 This was a situation where Carlos learned</p> <p>25 that these -- that Phoenix was put into</p>	<p style="text-align: right;">Page 44</p> <p>1 Jackson facility, and that's when we first learned</p> <p>2 that there was an empty lot there that was not a</p> <p>3 convenience store built or a gas station built.</p> <p>4 There was nothing basically on-site.</p> <p>5 Q. And on what date was that inspection</p> <p>6 performed?</p> <p>7 A. October 6th, 2014.</p> <p>8 Q. Okay. Now, let's look at -- oh, thanks.</p> <p>9 All right. This is going to be Exhibit 50.</p> <p>10 (Defendant's Exhibit 50 marked.)</p> <p>11 A. Thanks.</p> <p>12 MR. MCKENZIE: Hold on. I've got one.</p> <p>13 Never mind. She only made two copies of these.</p> <p>14 MR. STINE: Okay.</p> <p>15 BY MR. MCKENZIE:</p> <p>16 Q. All right. What is this?</p> <p>17 MR. STINE: Let me get it back.</p> <p>18 MR. MCKENZIE: That's fine. Take your</p> <p>19 time.</p> <p>20 MR. STINE: Okay.</p> <p>21 A. Okay. This appears to be another equipment</p> <p>22 and site inspection report that we had ordered. The</p> <p>23 date was February 12th, 2015, and this also</p> <p>24 concerned the Jackson facility. I believe this was</p> <p>25 at the time where we found out that the tanks were</p>
<p style="text-align: right;">Page 43</p> <p>1 receivership, and that's a red flag for the</p> <p>2 collector to immediately go to either myself or</p> <p>3 Jerry, and advise him of this.</p> <p>4 So Jerry then looks to see where we're at</p> <p>5 on the funding, and saw that we still had money to</p> <p>6 pay on the Jackson deal, and said, well, because of</p> <p>7 the foreclosure, because of the delinquency, because</p> <p>8 of the receivership, because of the delinquency,</p> <p>9 we're not going to fund the remaining 10 percent on</p> <p>10 Jackson. So that's why the letter would go out to</p> <p>11 the customer advising them of this.</p> <p>12 Q. Gotcha. All right. Let's see.</p> <p>13 Let's look at P-5.</p> <p>14 Tell me what Plaintiff's Exhibit 5 is.</p> <p>15 A. Let's take a look real quick, please.</p> <p>16 MR. STINE: Anybody else warm?</p> <p>17 MR. MCKENZIE: It's a little warm.</p> <p>18 MR. STINE: Let me see what I can do.</p> <p>19 (Mr. Stine exits.)</p> <p>20 A. This appears to be a site inspection that</p> <p>21 we had ordered right after we found out that</p> <p>22 Ataollah had tried to commit suicide --</p> <p>23 (Mr. Stine enters.)</p> <p>24 A. -- and the contract was delinquent. This</p> <p>25 looks like a site inspection we ordered on the</p>	<p style="text-align: right;">Page 45</p> <p>1 in storage, and that they were not tanks that we had</p> <p>2 paid for. They were paid for by Providence Capital.</p> <p>3 I -- I'm just trying to look at this. Hold on one</p> <p>4 second. Because I believe there were two within a</p> <p>5 short period of time.</p> <p>6 I believe when the inspector went there,</p> <p>7 part of the building had already been under</p> <p>8 construction, and I'm not 100 percent sure of that.</p> <p>9 But when he was let inside by the</p> <p>10 receivership attorney, a couple of the items on the</p> <p>11 Jackson invoice from Adams Tank was in the building.</p> <p>12 If you look toward the top, it says:</p> <p>13 (Reading) "Equipment was sealed in original</p> <p>14 shipping boxes."</p> <p>15 And a little further down toward the</p> <p>16 beginning:</p> <p>17 (Reading) "Inspector was unable to verify</p> <p>18 the equipment. It's still packaged in the shipping</p> <p>19 boxes. Based on the labels, it appears to be a</p> <p>20 point-of-sale system."</p> <p>21 So the point-of-sale system, which was one</p> <p>22 of the items on Adams' invoice, was on-site, still</p> <p>23 sealed in boxes, because it appears that the store</p> <p>24 was nowhere near complete or getting ready to open.</p> <p>25 Q. What -- was there any type of contradiction</p>

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<p style="text-align: right;">Page 46</p> <p>1 or discrepancy between Plaintiff's Exhibit 5 and</p> <p>2 Defendant's Exhibit 50, as far as what was</p> <p>3 inspected, that you know of (indicating)?</p> <p>4 A. Without looking at them, I can't answer</p> <p>5 your question.</p> <p>6 Q. Plaintiff's Exhibit 5 is this, that you</p> <p>7 just looked at.</p> <p>8 A. Oh, okay.</p> <p>9 Q. And Defendant's Exhibit 50 is what you have</p> <p>10 in your hand.</p> <p>11 A. And the question was?</p> <p>12 Q. Was there -- is there --</p> <p>13 A. Discrepancy?</p> <p>14 Q. Yeah. Is there any kind of discrepancy</p> <p>15 between those two documents? And the main reason I</p> <p>16 ask is there's photos attached that I can't see, and</p> <p>17 I don't know if you've seen the original photos.</p> <p>18 A. I have not.</p> <p>19 Q. Okay.</p> <p>20 A. Well, the inspection done on 10/7/14, which</p> <p>21 is Exhibit 5, from what I remember seeing, and what</p> <p>22 it says here:</p> <p>23 (Reading) "No signage. The building</p> <p>24 located in the address provided appeared -- "</p> <p>25 And my eyes are bad, so this is -- it's</p>	<p style="text-align: right;">Page 48</p> <p>1 (Defendant's Exhibit 51 marked.)</p> <p>2 BY MR. MCKENZIE:</p> <p>3 Q. All right. So tell me what's going on</p> <p>4 with -- sorry. I'll wait.</p> <p>5 A. Just give me a second to look at this,</p> <p>6 please.</p> <p>7 Q. Yeah. Sure.</p> <p>8 A. This was an inspection of the dispensers</p> <p>9 that we thought we had paid for for the Jackson</p> <p>10 facility. I believe these were the dispensers that</p> <p>11 were viewed at the storage facility by Jones -- that</p> <p>12 Jones Petroleum had them in storage at.</p> <p>13 And they were -- it looked like they were</p> <p>14 brand new, still wrapped up, never been used, never</p> <p>15 hooked up to a power source, and when we got this</p> <p>16 report back, as I had indicated earlier, we were</p> <p>17 then made aware of the fact that these nine</p> <p>18 dispensers that we thought we financed or paid for</p> <p>19 were, in fact, nine dispensers paid for by</p> <p>20 Providence Capital.</p> <p>21 Q. And was -- so was this report prepared</p> <p>22 after Ascentium filed its lawsuit against Adams Tank</p> <p>23 and Andy Adams?</p> <p>24 A. I believe it was. I don't remember the</p> <p>25 date of our complaint.</p>
<p style="text-align: right;">Page 47</p> <p>1 small writing. I'm sorry.</p> <p>2 (Reading) " -- at the address provided</p> <p>3 appears to be an unfinished barn or garage of some</p> <p>4 type of structure."</p> <p>5 So there was totally nothing going on in</p> <p>6 October of '14. When the inspector went back, I</p> <p>7 guess, four months later in February of '15, it</p> <p>8 appears that -- and again, these are hard to see.</p> <p>9 But it appears that there was a building there. I'm</p> <p>10 not sure if it was the barn building or if the store</p> <p>11 had started to be built.</p> <p>12 And it appears that the point-of-sale</p> <p>13 system was inside in boxes, and so was the Veeter</p> <p>14 Root Tank Monitoring System. Both of those items</p> <p>15 were inside boxed up, not hooked up, in some sort of</p> <p>16 building. I don't know, again, like I said, if it</p> <p>17 was the old barn building, or four months later, if</p> <p>18 construction had started, and there was a building</p> <p>19 there.</p> <p>20 Q. Is it possible that the October inspection</p> <p>21 was a mistake, and it wasn't the same building?</p> <p>22 A. No. I would say no.</p> <p>23 Q. Okay. All right.</p> <p>24 All right. Now let's talk about -- this is</p> <p>25 going to be Defendant's Exhibit 51.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. So --</p> <p>2 A. No, I take that back. Maybe it was not.</p> <p>3 The answer is I'm not sure. This is dated --</p> <p>4 Q. 11/12.</p> <p>5 A. 11/12 of '15. I don't remember the date of</p> <p>6 the complaint. I'm sorry.</p> <p>7 Q. It appears the complaint was filed July 24,</p> <p>8 2015. Does that ring a bell?</p> <p>9 A. That sounds right, I guess. Yes.</p> <p>10 Q. Okay. So at the time Ascentium filed a</p> <p>11 complaint against Adams Tank and Andrew Adams, were</p> <p>12 they not certain what the outcome was with the --</p> <p>13 whether they were going to get the collateral at the</p> <p>14 Jackson site?</p> <p>15 A. I'm sorry. Could you repeat that?</p> <p>16 Q. Yes.</p> <p>17 At the time Ascentium filed the lawsuit</p> <p>18 against Adams Tank and Andrew Adams, does this</p> <p>19 report indicate that Ascentium was not -- that the</p> <p>20 issue regarding the collateral at Jackson had not</p> <p>21 been resolved?</p> <p>22 A. Well, I just noticed something on the</p> <p>23 report.</p> <p>24 Q. Okay.</p> <p>25 MR. STINE: Let me state something. I</p>

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<p style="text-align: right;">Page 50</p> <p>1 think that the report date is the wrong date.  2 A. Yeah. I just noticed something. On the  3 top, it says date order, February 6th, '15.  4 On the bottom right, date of the report,  5 February 12th of '15.  6 Q. Okay.  7 A. For some reason, the report date is  8 incorrect, November of '15.  9 Q. Okay. Well, that certainly makes more  10 sense.  11 A. Yes, it does. It does.  12 MR. STINE: That date's definitely wrong.  13 I'm 100 percent certain of that.  14 BY MR. MCKENZIE:  15 Q. All right. So let's backtrack.  16 Let's assume that you're correct, that the  17 date of this -- this second report was performed on  18 2/12/2015. Okay?  19 A. Okay.  20 Q. All right.  21 So if you look now -- look at 50 and 51  22 side-by-side for me, because those two make more  23 sense to go together. Here it is (indicating).  24 A. Okay.  25 Q. Okay. So now, what does it appear -- what</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Well, I must have spoken about it to my  2 boss, Jerry, and I believe that's when we may have  3 engaged Kevin's firm, and advised him of what we  4 found out, and what our next step would be.  5 And I believe -- and I believe that's when  6 Kevin sent the initial letter to Andy Adams.  7 Q. Okay.  8 A. I believe. I'm not 100 percent positive.  9 Q. Okay.  10 Okay. So -- all right. Since we're  11 talking about inspection reports, let's just go with  12 this one.  13 THE WITNESS: This is going to be ours or  14 what?  15 MR. STINE: Those stay in the middle pack.  16 BY MR. MCKENZIE:  17 Q. Right there.  18 All right. This is going to be Exhibit  19 Number 52.  20 (Defendant's Exhibit 52 marked.)  21 BY MR. MCKENZIE:  22 Q. It's also an inspection report. That was  23 produced by Ascentium, initially.  24 MR. STINE: Let me take a look at that.  25 A. Uh-huh.</p>
<p style="text-align: right;">Page 51</p> <p>1 does it appear happened on February 12th, 2015?  2 A. Okay. Now my memory is refreshed.  3 In early February of '15, before the  4 lawsuit was filed, and I even believe before the  5 demand letter to Andy Adams went out, we were  6 dealing with the receiver at that time trying to  7 find out what was going on at this Jackson facility.  8 After we got those pictures back from  9 October '14, we said let's go out there again.  10 Let's see where our collateral is, find out what's  11 at the site, at the Jackson site, and find out  12 what's in the storage facility.  13 So I believe the same inspector, yeah, Bob  14 Goatley, on the same date, went to both the Jackson  15 facility, which was -- I don't know if it was still  16 a barn, or a partially built convenience store,  17 where he saw the point-of-sale system, and the fuel  18 tank monitoring system in boxes, and then he went  19 to, on the same day, the storage facility where  20 Jones was storing the nine dispensers.  21 So we did two site inspections on the same  22 day at the same time, two different locations.  23 Q. So after receiving these two inspection  24 reports, what was the next step? What did you do  25 with that information?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. All right. So I know we're jumping, but I  2 just wanted to go ahead and deal with these before  3 we forgot.  4 So this -- tell me what this asset  5 inspection report relates to.  6 A. Just give me a second to look at it,  7 please.  8 Q. For sure.  9 A. Okay. Looks like this was an inspection  10 that was done on May 31st, 2013.  11 Q. Okay. And --  12 A. Which would have --  13 Q. I'm sorry.  14 A. Which would have been after the Cairo  15 facility was fully funded for both Cairo 1 and Cairo  16 2 contracts.  17 Q. Okay. And so what -- did you review this  18 inspection report in doing your investigation to  19 prepare for the lawsuit?  20 A. I'm sure I did at that time. I mean, I  21 don't remember specifically, but I'm sure I looked  22 at whatever we had in the file at that time --  23 Q. Okay.  24 A. -- in preparation for the lawsuit.  25 Q. And what does this -- what does this</p>

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<p style="text-align: right;">Page 54</p> <p>1 inspection report tell you as a collection guy?</p> <p>2 A. Well, it tells me that, in May 2013, which</p> <p>3 would have been four months after the initial</p> <p>4 funding, and maybe two months after the final</p> <p>5 funding for the Cairo job, the equipment was -- some</p> <p>6 of it was there.</p> <p>7 Equipment had not all been received and</p> <p>8 installed, which leads me to believe that some of it</p> <p>9 was delivered.</p> <p>10 It says:</p> <p>11 (Reading) "Not all the equipment had been</p> <p>12 received and installed. Most is underground, and</p> <p>13 pumps had not been delivered."</p> <p>14 What it tells me is, a few months after</p> <p>15 funding, some of the items were there, and some were</p> <p>16 not, but nothing was installed. The store was not</p> <p>17 open yet and open for business. Nothing was</p> <p>18 running.</p> <p>19 Q. So -- and so who would have ordered this</p> <p>20 inspection report on May 31, 2013?</p> <p>21 A. Probably somebody in our funding</p> <p>22 department, because we had already started the</p> <p>23 contracts. I believe they were a few months in. We</p> <p>24 had already funded \$150,000 on Cairo 1, and \$100,000</p> <p>25 on Cairo 2. So we would have wanted to go out to</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. MCKENZIE:</p> <p>2 Q. I'll pass it to Kevin first, so he can look</p> <p>3 at it.</p> <p>4 A. Okay.</p> <p>5 Q. This is also an inspection report that was</p> <p>6 provided to us by Ascentium via discovery responses.</p> <p>7 Take a look at that, and then let me know</p> <p>8 when you're ready.</p> <p>9 A. Okay. I will.</p> <p>10 This appears to be another inspection of</p> <p>11 the Cairo facility two months after the one that we</p> <p>12 had just looked at, which I believe was May of '13.</p> <p>13 So another two months had gone by, and we</p> <p>14 did another site inspection at Cairo, and from what</p> <p>15 I could see -- and these are bad copies; a lot of</p> <p>16 the questions are blacked out, so it's hard to</p> <p>17 decipher -- but if you look at the one, two, three</p> <p>18 -- if you look at the fourth page, up on top, it</p> <p>19 appears that the Carrol 12-door cooler and beer cave</p> <p>20 had not been on-site yet. Still in July. It's on</p> <p>21 backorder, it reads.</p> <p>22 It appears that the eight-column gas canopy</p> <p>23 and four-column diesel canopy were there, installed,</p> <p>24 and up.</p> <p>25 And I do not see anything on this report</p>
<p style="text-align: right;">Page 55</p> <p>1 the site to see what was going on, and how far along</p> <p>2 it was, and if everything was in, up and running,</p> <p>3 and working. Apparently, it was not at that time.</p> <p>4 Q. So what does that -- what response does</p> <p>5 that initiate?</p> <p>6 A. Well, that probably would have -- the first</p> <p>7 thing we would have looked at is the customer</p> <p>8 paying, and making their payments, because,</p> <p>9 remember, we had the commencement agreement. We had</p> <p>10 already started the clock ticking.</p> <p>11 And the account, to the best of my</p> <p>12 knowledge, at that time, was up-to-date. Phoenix</p> <p>13 had been making the payments for a few months.</p> <p>14 I would guess, although I don't know this</p> <p>15 for a fact, that Len would have called Andy, or</p> <p>16 gotten in contact with Andy, and asked him how much</p> <p>17 longer before this store gets up and running, open</p> <p>18 for business, and off the ground, because we're four</p> <p>19 months in, now, since the 90 percent funding, and</p> <p>20 everything has not been delivered yet, and</p> <p>21 installed; the store is still not open.</p> <p>22 Q. Okay.</p> <p>23 MR. MCKENZIE: All right. This is going to</p> <p>24 be Exhibit 53.</p> <p>25 (Defendant's Exhibit 53 marked.)</p>	<p style="text-align: right;">Page 57</p> <p>1 about the dispensers, from what I could read. Like</p> <p>2 I said, a lot of it is blacked out.</p> <p>3 I believe at the time we were just</p> <p>4 checking, maybe, on the canopies and the cooler,</p> <p>5 which is Cairo 2 only, Cairo Contract Number 2 --</p> <p>6 that's the one for \$100,000.</p> <p>7 Q. So in Exhibit 52, what was being checked</p> <p>8 for in Exhibit 52 if 53 was canopy and cooler?</p> <p>9 A. It looks like we were checking on the Cairo</p> <p>10 Number 1 contract, which was the 10 dispensers, that</p> <p>11 was two months prior to the one that we just spoke</p> <p>12 about, which was the cooler and the canopies.</p> <p>13 Q. And how do you know that?</p> <p>14 A. Well, on the right, on Page 2, it says:</p> <p>15 (Reading) "Not all the equipment has been</p> <p>16 received and installed. Most is underground, and</p> <p>17 pumps had not been delivered."</p> <p>18 By pumps, I take that to mean the 10</p> <p>19 dispensers.</p> <p>20 Q. Okay.</p> <p>21 A. 10 gas dispensers.</p> <p>22 Q. Okay.</p> <p>23 A. It appears the building was still under</p> <p>24 construction.</p> <p>25 Q. Gotcha.</p>

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<p>1 All right. Let's see.</p> <p>2 Is there a protocol or procedure in place,</p> <p>3 an official procedure for a response that's supposed</p> <p>4 to occur after learning that you funded the deal,</p> <p>5 but all the equipment hasn't been installed or</p> <p>6 delivered?</p> <p>7 A. To my knowledge, I'm not aware. There may</p> <p>8 be, but I'm not -- I don't know for sure.</p> <p>9 Q. What, as the collection guy for Ascentium,</p> <p>10 what would you like to see happen in response to</p> <p>11 that?</p> <p>12 A. In response to what? I'm sorry.</p> <p>13 Q. In response to learning that you funded a</p> <p>14 deal, but all the equipment isn't installed.</p> <p>15 A. A collector would probably contact the</p> <p>16 salesperson, in this case Len Baccarro, and advise</p> <p>17 Len what we learned vis-a-vis the site inspections.</p> <p>18 Advising Len that, at that time, the contracts are</p> <p>19 being paid by Phoenix. They were up-to-date.</p> <p>20 However, Len, we learned that the store still isn't</p> <p>21 open. Even though they're current, making their</p> <p>22 payments, the store still isn't open. Could you</p> <p>23 find out for us what's going on?</p> <p>24 Q. Okay.</p> <p>25 Do you think that Len Baccarro failed to do</p>	<p>1 of special assets.</p> <p>2 Q. So where were you before 2008 when you came</p> <p>3 to Ascentium?</p> <p>4 A. All right. It's a long story, but I worked</p> <p>5 for a company -- believe it or not, I began in</p> <p>6 1979 --</p> <p>7 Q. Okay.</p> <p>8 A. -- with a leasing company called</p> <p>9 Studebaker, like the old car. Do you want me to</p> <p>10 spell that? S-T-U-D-E --</p> <p>11 Q. Oh, yeah.</p> <p>12 A. B-A-K-E-R. Studebaker Worthington,</p> <p>13 W-O-R-T-H-I-N-G-T-O-N, Leasing Corp.</p> <p>14 And in 1979, I was only out of school a few</p> <p>15 years. I went on board with Studebaker Worthington</p> <p>16 Leasing who did basically what Ascentium does, but</p> <p>17 on a much, much smaller scale out of New York.</p> <p>18 We grew to about 30 people over the first</p> <p>19 few years, and I was in the tax department. I did a</p> <p>20 little bit of credit work. I did a lot of</p> <p>21 collection work. I did document review. Like -- I</p> <p>22 was like -- I did a little bit of everything, had my</p> <p>23 hands in everything, and learned the finance</p> <p>24 business.</p> <p>25 Q. Did you do any sales?</p>
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<p>1 something he should have done in response to</p> <p>2 learning that information?</p> <p>3 A. I honestly don't know.</p> <p>4 Q. Okay. And when you say you don't know,</p> <p>5 what do you mean? I mean, I'm just asking for your</p> <p>6 opinion, and what you think.</p> <p>7 A. What I mean is, I don't know whether Len</p> <p>8 got on the phone with Andy, and asked him what was</p> <p>9 going on. I'm assuming he did. I don't know for a</p> <p>10 fact that he did.</p> <p>11 I don't think Len would just ignore the</p> <p>12 collector's information. Oh, okay, Phoenix is</p> <p>13 paying, why do I have to worry about it? Why do I</p> <p>14 have to find out why the store still isn't open?</p> <p>15 Some stuff has been delivered, some hasn't been.</p> <p>16 My guess is that Len would get in touch</p> <p>17 with Andy, and ask him for an update as to how the</p> <p>18 project is progressing.</p> <p>19 Q. Okay.</p> <p>20 All right. Just to backtrack a little bit,</p> <p>21 give me a quick description of the different job</p> <p>22 titles you've had at Ascentium.</p> <p>23 A. When I first was hired in 2008, I was a</p> <p>24 vice president of collections, and I believe my</p> <p>25 title changed in 2011 to vice president and manager</p>	<p>1 A. No. I was never involved in any sales.</p> <p>2 So the years go by, and in 2008 -- it was a</p> <p>3 privately held company. One gentleman owned, I</p> <p>4 think it was, 70 percent. The other owned 30</p> <p>5 percent.</p> <p>6 The 70 percent owner was getting on in age.</p> <p>7 He wanted to retire. The 30 percent owner bought</p> <p>8 him out. And this was in 2008.</p> <p>9 At that time, the gentleman who was now 100</p> <p>10 percent owner wanted to sell the company, but wanted</p> <p>11 the company sold and to be acquired by a larger</p> <p>12 company, but keeping the same staff.</p> <p>13 So in 2008, we were purchased by Main</p> <p>14 Street Bank, who was out of Kingwood, Texas. They</p> <p>15 were a bank by name. I think they had two or three</p> <p>16 branches, but what they really were, what Main</p> <p>17 Street Bank really was -- and again, they acquired</p> <p>18 Studebaker Worthington Leasing in 2008. All the</p> <p>19 employees in New York stayed the same.</p> <p>20 But Main Street Bank basically did what</p> <p>21 Ascentium does now. They did a lot of leases and</p> <p>22 loans nationwide. But being that they were a bank,</p> <p>23 and they got their funds very cheap because they</p> <p>24 were a bank, but being that they were a bank, they</p> <p>25 had to adhere to all these banking rules and</p>

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<p>1 regulations, and deal with the FDIC every year, and 2 state regulators, et cetera, et cetera. 3 So -- so the people that owned the bank 4 decided, well, if we do not want to be a bank 5 anymore, and deal with all these rules and 6 regulations, let's sell the branches, and start a 7 new company with the same employees, and let's call 8 it Ascentium Capital. 9 Q. Gotcha. 10 A. And that came into effect in 2011. 11 Between 2008, when they were Main Street 12 Bank, when they first bought Studebaker, and 2011, 13 when they became Ascentium, basically with the same 14 staff, the people in New York, at the Studebaker 15 branch, started to get let go little by little, 16 because they wanted to control more and more of the 17 operation down in Kingwood. 18 So it turned out that, over those next 19 three years, we went from like 30 people to three 20 people. Thank God I was still one of the ones that 21 were left. 22 And that's -- that's the story, basically. 23 Q. So was -- is it your understanding that 24 around 2011 is when Ascentium acquired the 25 Baccaros' company, American Equipment Finance?</p>	<p>1 Bank, which became Ascentium? 2 A. I began having experience with C-stores 3 when Main Street -- with Main Street Bank in 2008. 4 Studebaker did not finance that type of business. 5 Q. And why was that? 6 A. I'm not sure. I didn't make the policies 7 back then. I was just a -- 8 Q. So what type of loans did Studebaker 9 finance? 10 A. Mostly office equipment. 11 Q. Okay. 12 A. We would finance computers, and copiers, 13 and office furniture for law firms and CPA firms. 14 That was the crux of our business. 15 Q. Okay. 16 MR. STINE: Can we take a five-minute break 17 at some point? 18 MR. MCKENZIE: Yes, we can. I don't even 19 know what time it is. 20 MR. STINE: My watch is wrong. 21 MR. MCKENZIE: It's 10 till noon. We can 22 maybe take a five-minute break, and then we could do 23 a little longer break maybe at 1:00, and get lunch. 24 Is that okay with you? 25 MR. STINE: That's fine. Okay with me.</p>
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<p>1 A. I believe it was '12 -- 2012 or 2013. 2 Q. Okay. 3 A. I think it was 2012, and I believe Len ran 4 that company -- owned that company with his brother, 5 Richard, and I believe they were called American 6 Equipment Finance. 7 Q. Did they -- do you know anything about that 8 purchase and sale agreement? 9 A. I do not. 10 Q. Do you know anything about -- did they have 11 a similar situation that Studebaker -- Studebaker 12 Worthington wanted, where they kept their operation 13 intact? 14 A. Yes. 15 Q. Okay. 16 A. And they still do have the Jersey office. 17 I don't know how many people that they had when 18 Ascentium acquired them, and I don't know how many 19 they have now, but I believe -- I believe, I'm 20 guessing, most of that staff was retained or has 21 been -- or is still there, and has been retained, 22 but I'm not 100 percent sure. 23 Q. Okay. Had you had any experience dealing 24 with gas station or convenience store loans prior to 25 your work at Ascentium or, I guess, Main Street</p>	<p>1 (Recess 11:49 a.m. - 12:04 p.m.) 2 BY MR. MCKENZIE: 3 Q. All right. Back to our case. 4 Are you involved in collection efforts for 5 Ascentium for every loan that goes into default or 6 becomes a problem loan? 7 A. Not 100 percent of them. No. 8 Q. So is there -- is there somebody else 9 that's your equal? That does the same thing that 10 you do? 11 A. Generally my boss. 12 Q. Okay. 13 A. I mean, not my equal -- 14 Q. Right. 15 A. -- on the totem pole in the company with 16 him, but we basically will handle all the troubled 17 loans. 18 Q. Okay. And -- 19 A. Together. 20 Q. What percentage of loan transactions become 21 problem loans or trouble loans, was the phrase you 22 used, if you know? 23 A. I do not know the percentage. 24 Q. Is it more common or less common for there 25 to be -- for a loan to become a troubled loan?</p>

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<p style="text-align: right;">Page 66</p> <p>1 A. Less common. 2 Q. Less common? 3 A. Uh-huh. 4 Q. Okay. 5 Let's see. Do you know the percentage of 6 troubled loans that originate in the gas station 7 C-store -- 8 A. I do not. 9 Q. -- market? 10 A. I do not. 11 Q. So you've never noticed there's a higher 12 percentage of gas station C-store loans that -- 13 A. Correct. 14 Q. Okay. 15 Do you only become involved in a loan 16 transaction if it becomes a troubled loan? 17 A. No. 18 Q. And so what other instance would you become 19 involved in a loan transaction? 20 A. Most of the work I do are troubled. I work 21 on the troubled loans. I would also handle what we 22 call payment modification requests, where if we have 23 an account that's falling behind 30 or 60 days, and 24 they tell us that there's a specific reason as to 25 why they've fallen behind, and that they believe</p>	<p style="text-align: right;">Page 68</p> <p>1 A. And we have a product called daily pay 2 loan. I'm not sure what the document is called, but 3 we will loan money where the customer would make -- 4 we would ACH payment out of his account on a daily 5 basis. 6 So we have daily pay loans. We have 7 installment payment agreements. We have lease 8 agreements, true leases, and then we have the EFAs. 9 Q. And were the three different transactions 10 involving Phoenix, were all of those equipment 11 finance agreements, or were any of those a different 12 type of agreement? 13 A. They were all equipment finance agreements. 14 Q. Okay. That was my impression. I just 15 wanted to make sure. 16 A. Right. 17 MR. MCKENZIE: I do have you a copy of that 18 one. This is the -- this is going to be Exhibit 54, 19 Defendant's Exhibit 54. 20 (Defendant's Exhibit 54 marked.) 21 BY MR. MCKENZIE: 22 Q. This is the amended declaration of Tony 23 Campi, which is Document 3115113015 in the case you 24 filed against the Adams Tank defendants. 25 Did you prepare this document, Mr. Campi?</p>
<p style="text-align: right;">Page 67</p> <p>1 it's a temporary situation, and in three, four, five 2 months down the road, they'll be -- the cash flow 3 will be back to where they needed to be to make the 4 full payments, I will work on modifying the payments 5 for four -- for the next four, five, or six months, 6 where we would let them pay interest only on the 7 outstanding balance for a period of anywhere between 8 three and six months. We call it payment 9 modification, interest only, for six months, and 10 then we would add those six months' payments onto 11 the end of the loan. 12 So I would handle payment modification 13 requests, to make it a simpler statement. 14 Q. Does -- does it matter -- do you all use 15 just one form, equipment finance agreement? 16 A. No. 17 Q. And so -- 18 A. Well, let me retract that. Equipment 19 finance agreement, yes. I believe there's one form 20 that gets revised -- 21 Q. Okay. 22 A. -- from here or there. 23 We also have what we call installment 24 payment agreements. 25 Q. Okay. Go ahead.</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I did not prepare it. No. 2 Q. So do you know what the purpose of this 3 document -- do you know what the purpose of this 4 document is? 5 A. I believe so. 6 Q. Okay. What do you think the purpose is? 7 A. It's me saying that I understand what is in 8 here, and what our -- what we're trying to 9 accomplish in the lawsuit. 10 Q. So is it your -- all right. So let's look 11 at Item Number 6. 12 A. Uh-huh. 13 Q. Review that paragraph, and then just kind 14 of break it down for me, and explain it in layman's 15 terms. 16 A. Uh-huh. Okay. I will. Sorry. 17 (Complies with request.) 18 Okay. So what this is saying is, we are 19 contending that, on the first Cairo agreement, there 20 are amounts owing, and this paragraph is breaking 21 those amounts out into three separate sections. 22 The first amount is the \$60,192.28. That 23 is the principal sum still due on the loan. It also 24 lists the interest through those dates of \$1,213.48, 25 and also additional interest from October '15 to the</p>

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<p style="text-align: right;">Page 70</p> <p>1 entry of judgment at the default rate of 16 percent. 2 Q. And where do these -- how are these numbers 3 calculated? 4 A. The \$60,192 is a number that is calculated 5 using the default clause in the EFA. 6 Q. Okay. 7 A. It's the accelerated balance of the loan 8 from the date of default, and it gives credit for 9 any payments that were made during that time by the 10 customer, and it also gives a credit for the present 11 value's future payments, which at the date that the 12 figure was calculated, future payments are 13 discounted present value. 14 Q. So is it Ascentium's belief that Adams Tank 15 and/or Andy Adams owes the money provided in 16 Paragraph 6? 17 A. It's our contention that Phoenix Petroleum 18 owes that money. 19 Q. Okay. So in Item Number 7, review that, 20 and then we can be a little more brief. If you'd 21 just tell me what Item 7 represents. 22 A. It's the same as Item 6, only it refers to 23 the second Cairo agreement. 24 Q. Okay. 25 A. Same as I just explained for Item 6.</p>	<p style="text-align: right;">Page 72</p> <p>1 outlined in that paragraph of Item 7? 2 A. Yes. 3 Q. Okay. And what is Ascentium's basis for 4 that claim? 5 A. Well, the basis for the claim is Ascentium 6 funded Adams -- 7 Q. Okay. 8 A. -- \$216,000 to deliver specific items on an 9 invoice that Adams had provided us. 10 Q. Okay. 11 A. And to our knowledge, none of the items on 12 that invoice were ever delivered. 13 So we funded \$216,000. Collateral-wise or 14 equipment-wise, we feel that it's zero, so that's 15 why we feel that Adams owes the money. 16 Q. Okay. So if we look back at Exhibit 50 and 17 51, do -- do these exhibits not show that the 18 equipment -- that there was equipment provided at 19 the Jackson facility by Adams Tank? 20 A. At the Jackson facility, the Ruby Sapphire 21 System was there still in boxes, and the Veeder Root 22 Tank Monitoring System was there still in boxes. 23 And I'm not sure if those were the items that were 24 specifically on his invoice to us. 25 Q. Okay.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. And is it Ascentium's belief that Andy 2 Adams or Adams Tank owes Ascentium the money 3 outlined in Item 7? 4 A. Phoenix Petroleum owes that money. 5 Q. Okay. Well, there's -- excuse me. There's 6 a second paragraph in Item 7. 7 A. Oh, I see. Sorry. I didn't read it. 8 Q. I was just presuming that was a new one, 9 but. 10 A. Okay. So the second paragraph in Item 7 11 refers to the Jackson agreement. 12 Q. Okay. 13 A. And I believe that number -- or the 14 \$166,562 is calculated the same as the other numbers 15 in Paragraph 6 and 7 on the first two Cairo 16 agreements. And calculation-wise, it's done the 17 same way as the other two. 18 Q. And is the amount outlined in that second 19 paragraph, in Item Number 7, an amount that 20 Ascentium believes is owed by Adams Tank or -- 21 A. Yes. 22 Q. -- Andy Adams? 23 A. Yes. 24 Q. Okay. And is -- does Ascentium believe 25 that Adams Tank and Andy Adams owe the full amount</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Serial-number-wise. 2 Q. And then how about the other exhibit? 3 A. The other Jackson inspection, the pumps 4 were viewed. However, we learned that those pumps 5 were not pumps that we had paid for. They were paid 6 for by another finance company. So the pumps that 7 we thought we were paying for on the invoice of 8 \$216,000 from Andy were never delivered. These were 9 somebody else's dispensers. 10 Q. Was it also your opinion that the other 11 items you mentioned that are listed on Exhibit 50 12 were someone else's equipment or -- 13 A. I don't recall. 14 Q. Okay. 15 All right. Do you still have the 16 declaration in front of you? 17 A. Yes, I do. 18 Q. Okay. Let's look at the -- I believe 19 they're called Composite Exhibit A. 20 A. (Complies with request.) 21 Okay. 22 Q. So is this a -- a standard format of a 23 printout in a computer system? 24 A. Yes. 25 Q. Okay. And tell me -- there's a date at the</p>

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<p style="text-align: right;">Page 74</p> <p>1 top right corner. What does that date show?</p> <p>2 A. That's the date that the report was</p> <p>3 printed.</p> <p>4 Q. Was printed?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 And -- okay. So where it says total</p> <p>8 scheduled payments \$264,748.92 --</p> <p>9 A. Uh-huh. Yes.</p> <p>10 Q. -- what does that -- what amount does that</p> <p>11 represent?</p> <p>12 A. That is the gross receivable amount of the</p> <p>13 agreement. So number of payments times the monthly</p> <p>14 payment equals \$264,000 and whatever it is.</p> <p>15 Q. And is that gross amount for the equipment</p> <p>16 finance agreement where Ascentium was loaning</p> <p>17 \$240,000 --</p> <p>18 A. Yes.</p> <p>19 Q. -- to Phoenix?</p> <p>20 A. Yes. But then it turned out to be</p> <p>21 \$214,000, because we never funded the other 10</p> <p>22 percent.</p> <p>23 MR. STINE: (Indicating.)</p> <p>24 BY MR. MCKENZIE:</p> <p>25 Q. Or do you mean \$216,000?</p>	<p style="text-align: right;">Page 76</p> <p>1 to Ascentium, and applied to the balance.</p> <p>2 Subtracted from the balance of \$264,000.</p> <p>3 Q. So the 88 -- the total amount applied</p> <p>4 figure --</p> <p>5 A. Uh-huh. Yes.</p> <p>6 Q. -- that represents the amount paid by</p> <p>7 Phoenix?</p> <p>8 A. No. It represents the amount paid by</p> <p>9 Phoenix -- I'm sorry. Yes. This is the Jackson</p> <p>10 agreement. Yes. The answer to that is yes. It</p> <p>11 represents the amount paid by Phoenix on this</p> <p>12 contract.</p> <p>13 Q. All right.</p> <p>14 All right. So let's go over to the other</p> <p>15 side, and it says Contract Number 2118850.</p> <p>16 Is that the equipment finance number</p> <p>17 involving the Jackson facility?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Okay. And then this -- at the end of that</p> <p>20 little section on the left, it says:</p> <p>21 (Reading) "Equipment description:</p> <p>22 Dispensers and canopy."</p> <p>23 What's the significance of displaying that</p> <p>24 at the top of the agreement?</p> <p>25 A. Well, when an agreement is entered into our</p>
<p style="text-align: right;">Page 75</p> <p>1 A. \$216,000. I'm sorry. These numbers are</p> <p>2 small, and I don't have my reading glasses.</p> <p>3 Q. Hey, it's fine. It's easy to do.</p> <p>4 A. \$216,000. Yeah.</p> <p>5 Q. Okay. So -- all right.</p> <p>6 So above the total scheduled payments,</p> <p>7 there's a line that says regular payment amount, and</p> <p>8 that says \$3,875.08. So what does that amount</p> <p>9 represent?</p> <p>10 A. That's the monthly amount of the payment</p> <p>11 per the agreement.</p> <p>12 Q. Okay. And is that -- is that payment</p> <p>13 amount fixed, or is it -- is it a graduated payment?</p> <p>14 A. It's usually fixed.</p> <p>15 Q. Okay.</p> <p>16 A. But without looking at the agreement, I</p> <p>17 can't tell.</p> <p>18 Q. Okay.</p> <p>19 A. But they're usually fixed.</p> <p>20 Q. And then the next line says total amount</p> <p>21 applied.</p> <p>22 A. Uh-huh.</p> <p>23 Q. \$88,855.42. What does that amount</p> <p>24 represent?</p> <p>25 A. Those are the amount of funds received in</p>	<p style="text-align: right;">Page 77</p> <p>1 computer system, there are several boxes that have</p> <p>2 to be filled in. A lot of them are shortened, so we</p> <p>3 have a box for equipment description. It could be a</p> <p>4 2007 international truck. It could be hotel</p> <p>5 furniture. In this particular case, dispensers,</p> <p>6 meaning gas pumps and canopy.</p> <p>7 Q. So let's -- let's go down -- oh. Here's --</p> <p>8 all right. So in the middle, it says payment</p> <p>9 structure irregular. What does that mean?</p> <p>10 A. I'm not sure.</p> <p>11 Q. All right. Under that, it says the</p> <p>12 inception --</p> <p>13 A. Oh, I am sure.</p> <p>14 Q. Okay. Go ahead.</p> <p>15 A. Excuse me. I just figured it out.</p> <p>16 This was the Jackson deal. And on this</p> <p>17 particular contract, we requested that Phoenix pay</p> <p>18 10 percent of the total amount of the deal up front.</p> <p>19 So remember, the deal was originally for \$240,000.</p> <p>20 And if you look at the second payment down in the</p> <p>21 transaction amount, it says \$24,000. That was</p> <p>22 Phoenix's first payment to us.</p> <p>23 Q. Okay.</p> <p>24 A. Then the payments went down to the \$3,875.</p> <p>25 So irregular means it's not the same amount through</p>

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<p style="text-align: right;">Page 78</p> <p>1 the contract -- through all the contracts' payments.  2 Q. Gotcha.  3 So then it says inception date and first  4 payment date are the same, and those indicate  5 7/10/13. Is that -- is the inception date and first  6 payment date always the same, or is that unique to  7 this situation?  8 A. Inception date and first payment date are  9 always the same.  10 Q. And what -- what significance does -- does  11 the inception date -- I mean, what does that mean?  12 A. It means that's when the payments are to  13 begin.  14 Q. Is that when -- is the inception date from  15 when interest would accrue as well?  16 A. That's the start date of the contract.  17 Q. Okay.  18 A. Yes.  19 Q. All right. So let's flip to the next page.  20 A. (Complies with request.)  21 Okay.  22 Q. There's three of these charts. I'll try to  23 make this go quicker.  24 There's three of these charts.  25 A. Right.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. So if we go down to where it shows the  2 transaction history --  3 A. Okay.  4 Q. -- at the bottom, if you go down to Number  5 30.  6 A. Okay.  7 Q. Kind of walk me through that line, and tell  8 me what the title -- how the title of the column and  9 dates relate to the payments listed.  10 A. Under the column labeled effective date,  11 there's a date of 8/24/15. That was the date we  12 received proceeds from the bank that we had sold the  13 dispensers to.  14 Q. Okay.  15 A. The bank that's foreclosed on the property.  16 Q. Okay.  17 A. \$74,400 was attributable to the equipment  18 on the Cairo Number 1 agreement.  19 Q. And how did you all attribute that \$74,400  20 to the equipment?  21 A. I'm not sure I understand.  22 Q. Was there an appraisal performed, or was  23 that an arbitrary --  24 A. What we did was, we took the balance of the  25 Cairo Number 1 --</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. And there's similar headings at the top;  2 correct?  3 A. Correct.  4 Q. Okay. So on the second one, the contract  5 number is 2116122.  6 A. Correct.  7 Q. And do you know which equipment finance  8 agreement that --  9 A. That would be the Cairo Number 1 agreement.  10 Q. Okay. And do you recall what was -- what  11 was included in the Cairo Number 1 agreement?  12 A. 10 fuel dispensers. And I'm not sure if  13 there was anything else. I think there was the  14 point-of-sale system or -- point-of-sale system and  15 the fuel monitoring system also.  16 Q. So where it says, "Equipment description,  17 dispensers, canopy, et cetera", is that like a  18 misprint where it says canopy?  19 A. I believe it's incorrect.  20 Q. Okay.  21 A. The canopy was not part of this contract.  22 Q. Okay.  23 Is there a reason why somebody would put  24 canopy by equipment description?  25 A. I don't know.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Uh-huh.  2 A. -- and the Cairo Number 2 agreement, and we  3 prorated. Let's say, Cairo Number 1, out of the  4 entire balance due to the two contracts, Cairo 1  5 balance was 60 percent -- and these are not real  6 numbers. I'm trying to --  7 Q. Yeah.  8 A. -- explain. And Cairo 2 was 40 percent.  9 So we took the total amount received on both of the  10 contracts of the equipment that we sold to the bank,  11 and we prorated it between the two.  12 Because if you look at the next one,  13 \$49,600 was attributed both to the Cairo Number 2  14 contract. If you add those two numbers up, it comes  15 to the amount that we received from the bank in  16 total on the two contracts.  17 Q. Gotcha.  18 So -- okay. And I failed to do this on the  19 first one. So flip back over, and I'll do it --  20 A. Okay.  21 Q. -- more quickly. So if we look at the  22 bottom of the transaction history, on the first of  23 the Composite Exhibit A, which, on the court docket  24 numbering is Page 6 of 8. That might make it easier  25 to reference.</p>

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<p style="text-align: right;">Page 82</p> <p>1 At the very bottom right-hand corner,</p> <p>2 there's a number that says \$175,893.50.</p> <p>3 A. Correct.</p> <p>4 Q. Is that the total amount owed under the</p> <p>5 equipment finance agreement related to Jackson?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then if we go -- so if we look</p> <p>8 at Page 7 of 8, bottom right-hand corner, \$45,291,</p> <p>9 is that the total balance owed on the Cairo 1</p> <p>10 equipment finance agreement?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And then I'm sure you can see where I'm</p> <p>13 going. If we look at the bottom right corner of</p> <p>14 Page 8 of 8, it indicates \$34,734 as the total</p> <p>15 balance owed under the second Cairo agreement. Is</p> <p>16 that your understanding?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay.</p> <p>19 Also, if we go up to the -- on this last</p> <p>20 page, if we go up to the equipment description, it</p> <p>21 also reads dispensers, canopy, et cetera.</p> <p>22 A. Correct.</p> <p>23 Q. Is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Were these, internally -- did Ascentium</p>	<p style="text-align: right;">Page 84</p> <p>1 So anyways, it's not a big deal, but it's</p> <p>2 going to just be more cumbersome than it needs to</p> <p>3 be, because we're going to have to walk through and</p> <p>4 explain and compare ---</p> <p>5 A. That's fine.</p> <p>6 Q. All right.</p> <p>7 So at the depositions that were held in</p> <p>8 Florida in -- let's see -- June 22nd through the</p> <p>9 24th, there were a grouping of exhibits that</p> <p>10 Mr. Stine used, and there's a reference on these</p> <p>11 documents that we're going to go over, and it's</p> <p>12 Exhibit 14, 15, and 16. And these are copies of the</p> <p>13 equipment finance agreements.</p> <p>14 A. Okay.</p> <p>15 Q. Okay.</p> <p>16 And we'll mark this as -- since they're not</p> <p>17 part of these, we'll mark these as another exhibit.</p> <p>18 So -- but don't cover that up. This is going to be</p> <p>19 50 -- Exhibit 55.</p> <p>20 (Defendant's Exhibit 55 marked.)</p> <p>21 BY MR. MCKENZIE:</p> <p>22 Q. Let her stick a sticker on there.</p> <p>23 All right. So what is the agreement number</p> <p>24 here on this -- what's Defendant's Exhibit 55, and</p> <p>25 what was Exhibit 14 at Mr. Adams' deposition? Can</p>
<p style="text-align: right;">Page 83</p> <p>1 treat the two Cairo projects the same?</p> <p>2 A. I'm not sure I understand what you mean by</p> <p>3 the treating of the same.</p> <p>4 Q. Well, did they just -- I mean, I know they</p> <p>5 have different equipment finance agreements; right?</p> <p>6 A. (Nods head affirmatively.)</p> <p>7 Q. But is there any significance behind this</p> <p>8 equipment description being the same for the Cairo</p> <p>9 project?</p> <p>10 A. No. I believe it's an error.</p> <p>11 Q. Okay.</p> <p>12 All right. So this was No. 54.</p> <p>13 All right. Let's talk about -- all right.</p> <p>14 So I'm going to -- I want to talk through</p> <p>15 the equipment finance agreements with you.</p> <p>16 A. Okay.</p> <p>17 Q. This is going to be more cumbersome than it</p> <p>18 would need to be, because, for some reason, I don't</p> <p>19 know what -- some sort of electronic error -- we</p> <p>20 received some, I think some, complete legible copies</p> <p>21 of the executed equipment finance agreements</p> <p>22 yesterday, and I believe Mr. Stine's office sent or</p> <p>23 tried to send them a month ago.</p> <p>24 So I don't know what happened, but for</p> <p>25 whatever reason, we didn't get it until yesterday.</p>	<p style="text-align: right;">Page 85</p> <p>1 you read that?</p> <p>2 A. Oh. Exhibit 14. I'm sorry. Yes. And</p> <p>3 this is the Cairo Number 1 agreement.</p> <p>4 Q. Okay. And by looking so quickly, how did</p> <p>5 you know this was the Cairo 1 agreement?</p> <p>6 A. I have the agreement numbers basically</p> <p>7 memorized. I know 2116122 is the first one.</p> <p>8 Q. Okay. All right. So let's -- now, is this</p> <p>9 -- is this a document that you recognize as the</p> <p>10 standard form of the equipment finance agreement?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And if you look in -- well -- okay.</p> <p>13 Let's do this.</p> <p>14 All right.</p> <p>15 All right. Let's go -- if you flip back</p> <p>16 two pages.</p> <p>17 A. (Complies with request.)</p> <p>18 Okay.</p> <p>19 Q. And then you get to an invoice.</p> <p>20 A. Okay.</p> <p>21 Q. On that invoice, there appears to be a</p> <p>22 stamp where it says Schedule A.</p> <p>23 A. Correct.</p> <p>24 Q. Is that something that Ascentium stamps on</p> <p>25 this document?</p>

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<p>1 A. Yes.</p> <p>2 Q. At what point is this document stamped</p> <p>3 Schedule A?</p> <p>4 A. When the signed agreement is received, and</p> <p>5 the invoice is received, the invoice that goes with</p> <p>6 this agreement is stamped Schedule A, and it fills</p> <p>7 in the agreement number, which corresponds to the</p> <p>8 agreement number on the top of the EFA.</p> <p>9 Q. Okay.</p> <p>10 A. So what it's basically saying is this EFA</p> <p>11 covers the equipment on this particular invoice.</p> <p>12 Q. Okay. And what -- what do you know about</p> <p>13 this invoice, and how -- like how Ascentium got this</p> <p>14 invoice? Do you know anything about that?</p> <p>15 A. I do not.</p> <p>16 Q. You don't? Okay.</p> <p>17 So at what -- at what point did you see</p> <p>18 this invoice for the first time?</p> <p>19 A. When the loan started to go bad, and I</p> <p>20 started to review the documents.</p> <p>21 Q. Okay. So just for the record, this is the,</p> <p>22 what you call, the Cairo 1 or the first Cairo</p> <p>23 agreement?</p> <p>24 A. Correct.</p> <p>25 Q. And what -- by your reviewing the invoice,</p>	<p>1 Q. Gotcha. Okay.</p> <p>2 And who is Falcon Entity, LLC? Do you</p> <p>3 know?</p> <p>4 A. From what I understand, that was another</p> <p>5 entity that Ataollah owned.</p> <p>6 Q. Okay.</p> <p>7 A. He had two or three different entities. I</p> <p>8 think he had Phoenix, he had Falcon Entity, and he</p> <p>9 had an entity called Great American Travel Center.</p> <p>10 I'm not sure what those other two entities did.</p> <p>11 Q. So as to the Cairo 1 transaction,</p> <p>12 Mr. Masoodzadehgan did not sign any personal</p> <p>13 guaranties?</p> <p>14 A. He did. It's on Page 1 of the face of the</p> <p>15 EFA, two-thirds of the way down on the left.</p> <p>16 Q. Okay. Gotcha.</p> <p>17 Okay. All right. And then the next two</p> <p>18 documents appears to be another guaranty, with the</p> <p>19 guarantor, Great American Travel Center; is that</p> <p>20 correct?</p> <p>21 A. Correct. Signed by Ataollah.</p> <p>22 Q. Okay. All right. Then the next document</p> <p>23 is -- appears to be a UCC financing statement. Is</p> <p>24 that correct?</p> <p>25 A. That's correct.</p>
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<p>1 what equipment is covered under this invoice in your</p> <p>2 Schedule A?</p> <p>3 A. There are 10 gas dispensers. There is</p> <p>4 something described as hanging hardware. I'm not</p> <p>5 sure what that is. And there is the dual terminal</p> <p>6 Ruby Sapphire System. That's a point-of-sale</p> <p>7 system, from what I understand.</p> <p>8 Q. Okay.</p> <p>9 A. And that's it.</p> <p>10 Q. And then is there also a shipping and</p> <p>11 handling?</p> <p>12 A. Oh, I'm sorry. Yeah.</p> <p>13 Q. Okay.</p> <p>14 A. Yes, there is.</p> <p>15 Q. Okay.</p> <p>16 A. \$2,025.</p> <p>17 Q. Okay. All right. Then if we flip the</p> <p>18 page, the next two pages make up what appears to be</p> <p>19 a guarantee by Mr. Masoodzadehgan? Is that correct?</p> <p>20 A. I call him Ataollah, but yes, that's</p> <p>21 correct. I can't pronounce his last name.</p> <p>22 Q. Okay.</p> <p>23 A. Let me clarify that. That is not</p> <p>24 Mr. Ataollah's personal guaranty. He is signing a</p> <p>25 corporate guaranty for Falcon Entity, LLC.</p>	<p>1 Q. And it appears to have been filed and</p> <p>2 recorded January 24, 2013. Is that correct?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Is that the same date that the agreement</p> <p>5 was signed and/or executed by Ataollah?</p> <p>6 A. The agreement itself, the EFA, does not</p> <p>7 have a date on it.</p> <p>8 Q. How about the guaranty -- the guaranties?</p> <p>9 A. The guaranty for Falcon Entity is dated</p> <p>10 1/24/13.</p> <p>11 Q. Okay.</p> <p>12 A. The guaranty for Great American Travel</p> <p>13 Center, 1/24/13.</p> <p>14 Q. Okay.</p> <p>15 A. And the date of the UCC filing is 1/24/13.</p> <p>16 Q. Okay. All right.</p> <p>17 Then the next document is a commencement</p> <p>18 agreement?</p> <p>19 A. Correct.</p> <p>20 Q. And you referenced this earlier at the very</p> <p>21 beginning of our discussion today. What -- just</p> <p>22 tell me, just, you know, generally -- my</p> <p>23 understanding from what you said earlier is that the</p> <p>24 purpose of the commencement agreement is to show</p> <p>25 that the agreement has started, and you can begin</p>

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Page 90	<p>1 accepting payments. Is that --</p> <p>2 A. The purpose of the agreement is the</p> <p>3 customer telling Ascentium, basically, authorizes --</p> <p>4 authorizing Ascentium to begin the agreement, and</p> <p>5 start billing us for the payments. So they want to</p> <p>6 commence the deal, so to speak.</p> <p>7 Q. So at -- so on -- the commencement</p> <p>8 agreement appears to be dated January 22nd, 2013?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. So as of January 22nd, 2013, was</p> <p>11 that -- is that the day that you funded the project?</p> <p>12 The first invoice?</p> <p>13 A. I would have to go back and look at my</p> <p>14 notes. I have a copy of the dates that we funded</p> <p>15 the deal. I don't have it in front of me, though.</p> <p>16 Q. Okay.</p> <p>17 A. Can I just say something?</p> <p>18 Q. Yeah.</p> <p>19 A. The date of January 22, '13, it looks like</p> <p>20 the date that Ascentium prepared the agreement, the</p> <p>21 commencement agreement. It doesn't necessarily mean</p> <p>22 he signed it on 1/22/13. He could have signed it a</p> <p>23 day or two later, the same days that he signed the</p> <p>24 guaranties, which was 1/24/13.</p> <p>25 Q. Okay.</p>	Page 92	<p>1 as to what it's saying.</p> <p>2 These are very commonly prematurely signed.</p> <p>3 Q. Okay. All right. Let's -- yes. These are</p> <p>4 --</p> <p>5 MR. STINE: Off the record.</p> <p>6 (Off-the-record discussion.)</p> <p>7 BY MR. MCKENZIE:</p> <p>8 Q. Okay. This is -- let's see. We're looking</p> <p>9 at Exhibit 14 in Mr. Adams' deposition, which is</p> <p>10 marked as Defendant's Exhibit 55.</p> <p>11 A. Correct.</p> <p>12 Q. All right. So keep that in front of you,</p> <p>13 and we'll call this next exhibit, which is a fax</p> <p>14 transmission from Ed Schuler to Maria Negri, which</p> <p>15 contains a copy of the equipment finance agreement,</p> <p>16 Agreement Number 2116122 --</p> <p>17 A. Okay.</p> <p>18 Q. -- for you to review, and we'll discuss</p> <p>19 this, because it's more legible.</p> <p>20 A. Okay.</p> <p>21 (Defendant's Exhibit 56 marked.)</p> <p>22 MR. STINE: This is D-56?</p> <p>23 MR. MCKENZIE: 56.</p> <p>24 BY MR. MCKENZIE:</p> <p>25 Q. Okay. So let's start at the beginning of</p>
Page 91	<p>1 A. That's the date that this document was</p> <p>2 prepared, I believe, and sent to him for signature.</p> <p>3 Q. All right. So now let's look at the next</p> <p>4 page, and that's a delivery and acceptance</p> <p>5 certificate.</p> <p>6 A. Correct.</p> <p>7 Q. What is the purpose of that?</p> <p>8 A. The purpose of this document is the</p> <p>9 customer advising Ascentium that all the equipment</p> <p>10 covered by the agreement has been delivered and</p> <p>11 installed.</p> <p>12 Q. All right. And what date was that signed?</p> <p>13 A. 1/24/13.</p> <p>14 Q. So how -- how is it that Mr. Masoodzadehgan</p> <p>15 could certify all the equipment is delivered and</p> <p>16 installed before the equipment is delivered and</p> <p>17 installed?</p> <p>18 A. I have no idea. Many, many times -- this</p> <p>19 is not only on the Phoenix deals -- customers</p> <p>20 prematurely sign this document. The reason why is</p> <p>21 because they get all the documents together in one</p> <p>22 package, and they start signing, and they start</p> <p>23 signing (indicating), and they get to this one, oh,</p> <p>24 I'll sign this too, and I'll date it the same day I</p> <p>25 date everything else, not even reading the document</p>	Page 93	<p>1 the facts, and then when we get to the agreement, we</p> <p>2 can compare where we need to, if we even need to.</p> <p>3 A. Okay.</p> <p>4 Q. So if you look at the top of this page, the</p> <p>5 first page of Defendant's Exhibit 56 is Page 1 of 15</p> <p>6 in a fax transmission; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 All right. So what, if you know, what does</p> <p>10 this appear to be to you?</p> <p>11 A. It appears to be a fax from Maria Negri,</p> <p>12 who works in Len's office in New Jersey, to Ed</p> <p>13 Schuler, sending him what we call the document</p> <p>14 package for execution by Phoenix.</p> <p>15 Q. Or is this the reverse?</p> <p>16 A. I apologize.</p> <p>17 Q. Okay.</p> <p>18 A. It's from Ed to Maria. It's after the</p> <p>19 documents were executed. It's going back --</p> <p>20 Q. Okay.</p> <p>21 A. -- to Maria. I apologize.</p> <p>22 Q. No, that's fine.</p> <p>23 A. I didn't look at the "to" and "from".</p> <p>24 Q. All right. So let's look at Page 2 of 15,</p> <p>25 which is the first -- you know, the substance of the</p>

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<p style="text-align: right;">Page 94</p> <p>1 documents. What -- tell me what this form is, and 2 what its purpose is. 3 A. This is a letter going to the customer from 4 Ascentium congratulating them that their financing 5 had been approved, and it tells them what to do with 6 the documents once they received them. 7 If there is a check that's needed to come 8 back with the executed documents, it breaks down the 9 amount on the bottom. Tells them where to send it. 10 Tells them what items to fill in, and that's 11 basically it. 12 Q. And when Mr. Schuler returns the executed 13 version of the contract, is he supposed to provide 14 all these items, and follow all these instructions? 15 A. Well, whoever is executing the documents -- 16 Q. Okay. 17 A. -- is supposed to. 18 Q. Okay. 19 All right. So let's look at the next page. 20 A. Okay. 21 Q. Tell me what this document is. 22 A. Can I just read it for a second? 23 Q. You sure can. 24 A. This is a document that the customer fills 25 out authorizing Ascentium, giving them the name and</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Let me show you that. 2 This Exhibit 57 is a transcription by a 3 court reporter that we had prepared of a .wav file. 4 It was -- it was an electronic document provided to 5 us through discovery by Ascentium called .wav file 6 468. 7 You all can -- it's real short. You all 8 can look at it real quick. 9 A. (Refers to document.) 10 Okay. 11 Q. So is this transcription of the .wav file 12 468 this verbal verification referenced in on Page 3 13 of 15 of Defendant's Exhibit 56? 14 A. Yes. 15 Q. Okay. 16 A. Well, can I correct that a bit? 17 Q. Yes. 18 A. This refers only to Cairo 1. (Indicating) 19 this is referring to Cairo 1 and Cairo 2. 20 Q. Right. 21 A. Okay. 22 Q. So does that -- does the fact that this 23 transcription referenced both or two different Cairo 24 equipment finance agreement numbers indicate they 25 were executed on the same date?</p>
<p style="text-align: right;">Page 95</p> <p>1 the phone number and the title of the person that 2 they wish us to do the verbal verification with. 3 Q. And what is a verbal verification? 4 A. Verbal verification is done prior to any 5 funding to the supplier. 6 Q. Okay. All right. 7 A. So in this document, Ataollah is basically 8 authorizing Ascentium to do the verbal with 9 Mr. Schuler. 10 Q. Okay. And what is the purpose of doing a 11 verbal verification? 12 A. We want to make sure that -- that the 13 customer verifies that they know of the agreement, 14 first of all, number one. We verify what we show as 15 their billing address. We verify what we show as 16 what the equipment location -- where the equipment 17 location is supposed to be. And we ask them if any 18 of the equipment has been delivered and/or installed 19 yet, and do they authorize us to pay the supplier 20 for the collateral. 21 Q. And why does Ascentium do that? I know -- 22 I mean, does -- that's a bad question. Let's do 23 this. Let's look at what we'll mark as Exhibit 57. 24 (Defendant's Exhibit 57 marked.) 25 BY MR. MCKENZIE:</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yes, I would say so. 2 Q. Okay. And is this the standard line of 3 questioning that's asked, or does -- do these verbal 4 verification questions vary depending on the loan 5 and the customer? 6 A. It's a standard form. 7 Q. Okay. Is this a low level Ascentium 8 representative, or is this someone within the 9 company with authority, or a salesperson talking to 10 -- 11 A. I would say it's a lower level employee. 12 Q. Okay. 13 And if you look at Line -- so the numbers 14 at the side -- I don't know if you've read a 15 transcript -- but the line numbers -- 16 A. Okay. 17 Q. -- if you'd look at Line Number 22. 18 A. Okay. 19 Q. Read from 22 to 25. 20 Just read it out loud. I'm sorry. 21 A. Oh, I'm sorry. 22 (Reading) "Ascentium says: Do you 23 authorize Adams Tank &amp; Lift? I'm sorry. Do you 24 authorize my company," meaning Ascentium, I guess, 25 "to disburse the first disbursement to Adams Tank &amp;</p>

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<p style="text-align: right;">Page 98</p> <p>1 Lift? Answer by Mr. Schuler: Yes, we do."</p> <p>2 Q. Is -- is this procedure, for verbal</p> <p>3 verification asking whether Ascentium is</p> <p>4 specifically authorized to disburse funds to Adams</p> <p>5 Tank, is that to protect Ascentium from the customer</p> <p>6 complaining that they paid something they weren't</p> <p>7 supposed to?</p> <p>8 A. Yes. If we disburse funds, we have it on</p> <p>9 record that the customer authorized us to disburse</p> <p>10 the funds.</p> <p>11 Q. And why does Ascentium feel the need to</p> <p>12 have the customer authorize that disbursement?</p> <p>13 A. Well, we're letting money go out the door,</p> <p>14 and we want to make sure that the customer is</p> <p>15 agreeable for us to release the funds --</p> <p>16 Q. Okay.</p> <p>17 A. -- to his supplier.</p> <p>18 Q. Have you listened to this? Did you ever</p> <p>19 listen to this --</p> <p>20 A. I have not listened to it. No.</p> <p>21 Q. Okay.</p> <p>22 If you'll flip to the next page.</p> <p>23 A. Okay.</p> <p>24 Q. At the top of the page, just read -- read</p> <p>25 out loud Lines 1 through 4.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. -- section?</p> <p>2 Read that out loud for me.</p> <p>3 A. (Reading) "This agreement, the terms of</p> <p>4 which have been freely negotiated by each party, is</p> <p>5 also subject to the terms and conditions on the</p> <p>6 reverse side or following page, which are all made</p> <p>7 part hereof, and which debtor and secured party</p> <p>8 acknowledge. They have read and accepted. This is</p> <p>9 a non-cancellable agreement."</p> <p>10 Q. And then what's it say again?</p> <p>11 A. You want me to reread it?</p> <p>12 Q. No. What's it say under that last</p> <p>13 sentence?</p> <p>14 A. (Reading) "This is non-cancellable</p> <p>15 agreement."</p> <p>16 Q. So it says, "This is a non-cancellable</p> <p>17 agreement" twice?</p> <p>18 A. Yes, it does.</p> <p>19 Q. So what did -- what does that mean to you?</p> <p>20 A. I don't know.</p> <p>21 Q. Does -- do you think that means that once</p> <p>22 you sign this agreement, you can't cancel the</p> <p>23 agreement?</p> <p>24 A. That's correct. But I don't know why it's</p> <p>25 there twice, is what I'm saying.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. (Reading) "Ascentium rep: Do you have an</p> <p>2 anticipated date as to when you're going to receive</p> <p>3 that equipment? Mr. Schuler: Everything but the</p> <p>4 canopy is already on-site."</p> <p>5 Q. So, I mean, what would be the purpose of --</p> <p>6 if the Ascentium representative asked that question,</p> <p>7 would that have been something that somebody higher</p> <p>8 up at Ascentium would have wanted her to ask, or is</p> <p>9 that a normal question to ask?</p> <p>10 A. That's a normal question.</p> <p>11 Q. Okay.</p> <p>12 All right. This is?</p> <p>13 A. 57.</p> <p>14 Q. Okay.</p> <p>15 All right. Let's look -- go back to 56.</p> <p>16 A. (Complies with request.) Okay.</p> <p>17 Q. All right. If we look at -- it's Page 415.</p> <p>18 A. Okay.</p> <p>19 Q. This is the first page of the standard</p> <p>20 equipment finance agreement, which was made specific</p> <p>21 to Phoenix.</p> <p>22 If you look down, do you see where it says,</p> <p>23 right above the first signature block, there's a</p> <p>24 bold faced --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay.</p> <p>2 Well, do you know why it's there once?</p> <p>3 A. It's there because it's -- the customer's</p> <p>4 agreeing that once he signs the agreement, it cannot</p> <p>5 be canceled. He has to make all the payments.</p> <p>6 Q. All right. If you go to the next page,</p> <p>7 which is 5 of 15.</p> <p>8 A. (Complies with request.)</p> <p>9 Okay.</p> <p>10 Q. Number 5, titled "Payments".</p> <p>11 A. Okay.</p> <p>12 Q. If you look towards the end, the bold all</p> <p>13 caps sentence, read that out loud.</p> <p>14 A. (Reading) "Your obligation to make payments</p> <p>15 and pay other amounts -- "</p> <p>16 Again, this is small print, so give me a</p> <p>17 minute.</p> <p>18 (Reading) " -- other amounts hereunder is</p> <p>19 absolute and unconditional, and not subject to</p> <p>20 abatement, reduction, or setoff for any reason</p> <p>21 whatsoever. Following the first payment date, the</p> <p>22 terms shall continue", it looks like, "without</p> <p>23 interruption for the number of months referred to --</p> <p>24 referred on the first page."</p> <p>25 I'm sorry I'm reading slow.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. No, that's fine.</p> <p>2 A. Because, again, my eyesight --</p> <p>3 Q. Right.</p> <p>4 A. -- with this print is hard.</p> <p>5 Q. Right.</p> <p>6 So does that reaffirm that what's stated on</p> <p>7 the first page, that, quote, this is a</p> <p>8 non-cancellable agreement --</p> <p>9 MR. STINE: Object to the form.</p> <p>10 BY MR. MCKENZIE:</p> <p>11 Q. -- end quote?</p> <p>12 A. Let me just reread it quickly again.</p> <p>13 Q. And that's fine. And this is just in your</p> <p>14 opinion.</p> <p>15 MR. STINE: Object to the form.</p> <p>16 A. Yes, it does. It's reaffirming the</p> <p>17 non-cancellable agreement on Page 1.</p> <p>18 Q. So when this agreement is executed, do all</p> <p>19 the parties intend for it to not be canceled under</p> <p>20 any circumstance?</p> <p>21 MR. STINE: Object to the form.</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 All right. Let's flip to Page 10 of 15.</p> <p>25 A. (Complies with request.)</p>	<p style="text-align: right;">Page 104</p> <p>1 is given to this last section that you just read</p> <p>2 aloud?</p> <p>3 A. The last section on the top paragraph?</p> <p>4 Q. Yeah. It states:</p> <p>5 (Reading) "Even though items of equipment</p> <p>6 remain to be delivered to and accepted by you from</p> <p>7 one or more vendors", what -- what is the purpose of</p> <p>8 mentioning acceptance by the borrower in that</p> <p>9 statement? Do you know?</p> <p>10 MR. STINE: Object to the form.</p> <p>11 A. I'm not quite sure I understand what you're</p> <p>12 asking. I think I understood the first part of your</p> <p>13 question. Not the second part.</p> <p>14 Q. Well, what, in Tony Campi terms --</p> <p>15 A. Okay.</p> <p>16 Q. -- what does this last sentence mean?</p> <p>17 A. The last sentence?</p> <p>18 Q. Uh-huh.</p> <p>19 MR. STINE: Object to the form.</p> <p>20 A. I'm going to read it again. Okay?</p> <p>21 Q. Yeah, that's fine.</p> <p>22 A. (Reads to himself.)</p> <p>23 What that sentence means is, it's the</p> <p>24 customer advising Ascentium that they may commence</p> <p>25 the agreement, start the clock ticking, as we say,</p>
<p style="text-align: right;">Page 103</p> <p>1 Okay.</p> <p>2 Q. And this is the commencement agreement; is</p> <p>3 that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 MR. STINE: What page?</p> <p>7 THE WITNESS: 10 of 15.</p> <p>8 MR. STINE: Gotcha.</p> <p>9 BY MR. MCKENZIE:</p> <p>10 Q. Oh, yeah. That first introductory</p> <p>11 paragraph.</p> <p>12 A. Okay.</p> <p>13 Q. Read the last two sentences out loud for</p> <p>14 me.</p> <p>15 A. Starting with "the equipment"?</p> <p>16 Q. Uh-huh.</p> <p>17 A. (Reading) "The equipment is being delivered</p> <p>18 at various times, and the vendor or vendors of the</p> <p>19 equipment have to be paid for each item of equipment</p> <p>20 at or before it's delivered to you. You agree to</p> <p>21 commence the initial non-cancellable term of the</p> <p>22 agreement immediately, even though items of the</p> <p>23 equipment remain to be delivered to and accepted by</p> <p>24 you from one or more vendors."</p> <p>25 Q. So -- so what -- I mean, what significance</p>	<p style="text-align: right;">Page 105</p> <p>1 begin billing us the payments immediately, even</p> <p>2 though items of equipment remain to be delivered and</p> <p>3 accepted from however many vendors that there may</p> <p>4 be.</p> <p>5 Q. So if items aren't accepted by the</p> <p>6 customer, the terms would still be non-cancellable?</p> <p>7 Is that how that reads to you?</p> <p>8 MR. STINE: Object to the form.</p> <p>9 A. Yes. That's how it reads to me.</p> <p>10 Q. Okay.</p> <p>11 All right. Let's go to Page 11 of 15.</p> <p>12 A. Okay.</p> <p>13 Q. All right. Tell me -- you can look at it</p> <p>14 for a minute, if you want to, and tell me what this</p> <p>15 form is, and what its purpose is.</p> <p>16 A. The purpose of this form is the customer</p> <p>17 authorizing Ascentium to debit their bank account</p> <p>18 every month for the payments that are due, as</p> <p>19 opposed to them mailing in a check.</p> <p>20 Q. Okay.</p> <p>21 A. So we call this ACH. We ACH the payments.</p> <p>22 Q. So -- so this was an ACH payment --</p> <p>23 A. Authorization form.</p> <p>24 Q. -- and do you know if all the payments made</p> <p>25 by Phoenix were ACH?</p>

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<p>1 A. I do not know.</p> <p>2 Q. Okay.</p> <p>3 If we look back at the schedule of payments</p> <p>4 sheet, would it indicate whether they were ACH or --</p> <p>5 A. I do not believe it does.</p> <p>6 Q. Let's look. I'm curious.</p> <p>7 All right. Let's look at -- and see if</p> <p>8 this tells us anything. Let's look at -- this is</p> <p>9 Exhibit 54. Exhibit -- Composite Exhibit A, Page 7</p> <p>10 of 8, which is related to Contract Number 2116122,</p> <p>11 which is also the contract number referenced in</p> <p>12 Defendant's Exhibit 56.</p> <p>13 If you look in the one, two, three, four,</p> <p>14 five -- fifth column, where it says check number --</p> <p>15 A. Okay.</p> <p>16 Q. -- it -- there's some four digit numbers,</p> <p>17 and then it goes 1 through 25.</p> <p>18 A. Correct.</p> <p>19 Q. Are those numbers 1 through 25 ACH?</p> <p>20 A. Yes, they are.</p> <p>21 Q. Okay.</p> <p>22 So if we look at the last two number --</p> <p>23 well, not the last two, but Numbers 28 and 29 --</p> <p>24 A. Okay.</p> <p>25 Q. -- would that show \$30 ACH payments?</p>	<p>1 to that. And we go to -- here we go. Page 13 of</p> <p>2 15.</p> <p>3 A. (Complies with request.)</p> <p>4 Okay.</p> <p>5 Q. Titled "Delivery and Acceptance</p> <p>6 Certificate", which we discussed briefly earlier --</p> <p>7 A. Right.</p> <p>8 Q. -- when we were talking about Exhibit 55.</p> <p>9 I recall you indicated that these are often</p> <p>10 signed before they're supposed to be.</p> <p>11 A. Prematurely.</p> <p>12 Q. So why are they included with the agreement</p> <p>13 package by Ascentium?</p> <p>14 A. When the package first goes out --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- so the customer has it, but what they're</p> <p>17 supposed to do is hold onto it. Then after</p> <p>18 everything comes in, it's delivered, then they're</p> <p>19 supposed to sign it, and send it back.</p> <p>20 But like I said, a lot of times they just</p> <p>21 rush through it, and they sign everything that's put</p> <p>22 in front of them.</p> <p>23 Q. So when you all get these that are signed</p> <p>24 on the same date, and they're stuck in the file, I</p> <p>25 mean, what does that tell you if it goes to</p>
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<p>1 A. (Nods head affirmatively.)</p> <p>2 Q. What does that -- does that indicate</p> <p>3 anything to you?</p> <p>4 A. It's a returned item fee.</p> <p>5 Q. Which means?</p> <p>6 A. If an ACH that we -- when we debit an</p> <p>7 account, if an ACH comes back NSF, non-sufficient</p> <p>8 funds, we charge them a \$30 fee, because we have to</p> <p>9 try to re-process it again.</p> <p>10 Q. Okay. So when they quit making payments,</p> <p>11 really they -- you all have been ACH'ing them the</p> <p>12 whole time?</p> <p>13 A. In this particular --</p> <p>14 Q. Okay.</p> <p>15 A. On this particular schedule, yes.</p> <p>16 Q. Okay. I'm getting there. I'm just trying</p> <p>17 to understand all these --</p> <p>18 A. Okay.</p> <p>19 Q. -- forms.</p> <p>20 Okay. All right. Number -- next page in</p> <p>21 Exhibit 50 -- Defendant's Exhibit 56, this is Page</p> <p>22 12 of 15, and it's called "Signer identification</p> <p>23 addendum."</p> <p>24 A. Okay.</p> <p>25 Q. There doesn't appear to be any significance</p>	<p>1 collection? Does that tell you anything?</p> <p>2 A. Not really.</p> <p>3 Q. All right.</p> <p>4 MR. MCKENZIE: Do you all want to grab</p> <p>5 something to eat?</p> <p>6 THE WITNESS: What time is it?</p> <p>7 MR. MCKENZIE: 1:20.</p> <p>8 MR. STINE: Yeah. Let's do that.</p> <p>9 (Recess 1:20 p.m. - 2:06 p.m.)</p> <p>10 BY MR. MCKENZIE:</p> <p>11 Q. Before the break, we were discussing</p> <p>12 Defendant's Exhibit 55 and 56. If you'll get those.</p> <p>13 A. (Complies with request.)</p> <p>14 Okay. I have them.</p> <p>15 Q. So earlier, we discussed, you know,</p> <p>16 Defendant's Exhibit 55 is what has been used as an</p> <p>17 exhibit by Ascentium. And then Exhibit 56,</p> <p>18 Defendant's Exhibit 56, was recently provided to</p> <p>19 Defendants, and is a fax transmission containing</p> <p>20 legible signed versions of the equipment finance</p> <p>21 agreement, which is also represented by Defense</p> <p>22 Exhibit 55.</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 Now, Exhibits -- I mean, Defendant's</p>

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<p style="text-align: right;">Page 110</p> <p>1 Exhibit 55 contains an invoice marked by Ascentium, 2 as you previously stated, Schedule A; is that 3 correct? 4 A. Correct. 5 Q. Okay. 6 However, does Defendant's Exhibit 56 7 contain a copy of the invoice? 8 A. Let me look through it. 9 No, it does not. 10 Q. Why is that? 11 A. I'm not sure. 12 Q. And then if you look at Defendant's Exhibit 13 55, it contains a copy of a UCC financing statement. 14 A. Okay. 15 Q. But Defendant's Exhibit 56 does not; is 16 that correct? 17 A. That's correct. 18 However, Exhibit 56 are copies of documents 19 sent by Ed Schuler of Phoenix to Ascentium. Ed 20 Schuler would not have a copy of the UCC file by us. 21 UCC filed by us would have been right after receipt 22 of this. 23 Q. Okay. 24 A. And looking back on your prior question, Ed 25 Schuler would probably could not have a copy of Andy</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Is that standard procedure to have these 2 documents executed by the borrower without the 3 Schedule A included with the documents? 4 A. I don't know. 5 Q. Okay. 6 A. I don't know for sure. 7 Q. Okay. 8 All right. Now, let's look at -- we're 9 going to call this -- we'll wait on that. All 10 right. 11 All right. Now I'm going to give -- we're 12 going to mark as Exhibit 57 -- 13 THE COURT REPORTER: 58? 14 MR. MCKENZIE: Well, we'll start with 57. 15 BY MR. MCKENZIE: 16 Q. No. 57 was Exhibit 15 to the depositions 17 that were held recently in Florida? 18 A. Okay. 19 Q. And so mark that one, and then we'll -- 20 I'll give it to him. 21 THE COURT REPORTER: This will be No. 58. 22 MR. MCKENZIE: Okay. Sorry. No. 58. 23 Sorry. 24 (Defendant's Exhibit 58 marked.) 25 BY MR. MCKENZIE:</p>
<p style="text-align: right;">Page 111</p> <p>1 Adams' invoice, which was stamped Schedule A, when 2 he sent the docs back to us. The invoice would have 3 come from Adams Tank &amp; Lift to Ascentium, not from 4 Phoenix. 5 Q. Okay. So let's look at the date. Let's 6 look at that invoice. 7 A. Okay. 8 Q. So isn't it true that the date on the 9 invoice included with Defendant's Exhibit 55 is 10 1/21/13? 11 A. Yes. 12 Q. All right. So now let's look at Defense 13 Exhibit 56, the Page 2 of 15. 14 A. (Complies with request.) 15 Okay. 16 Q. Is a letter dated January 22nd, 2013; 17 correct? 18 A. Correct. 19 Q. So at the time this packet was sent to 20 Mr. Schuler for execution, wouldn't Ascentium have 21 had the invoice from Mr. Adams? 22 A. Not necessarily. Just because the invoice 23 is dated 1/21, it doesn't mean that it was sent to 24 us -- into us on 1/21. He could have sent it one, 25 two, three, four days later.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. All right. So just tell me what this 2 document is. It's -- 3 A. This is a copy of the Cairo Number 2 job. 4 Q. Okay. And how do you know that? 5 A. I recognize the agreement number. 6 Q. Okay. 7 A. And it also says, under collateral 8 location, Highway 14, Cairo, Georgia. 9 Q. Okay. 10 All right. Let's go -- does this -- if you 11 look down -- let's see. 12 Let's go to the third page. 13 A. (Complies with request.) 14 Okay. 15 Q. Do you see an invoice? 16 A. I do. 17 Q. Okay. What's the date on that invoice? 18 A. 1/21/13. 19 Q. Okay. And what items of equipment are 20 represented on this invoice? 21 A. It is the Carrol cooler, 12-door cooler and 22 beer cave, the eight-column gas canopy, and the 23 four-column diesel canopy. 24 Q. Okay. 25 And this appears to be marked Schedule A.</p>

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<p style="text-align: right;">Page 114</p> <p>1 Was that done by Ascentium?</p> <p>2 A. Yes. It was a stamp.</p> <p>3 Q. Okay.</p> <p>4 All right. Let's look at the next page.</p> <p>5 This appears to be a UCC financing statement with a</p> <p>6 file date of January 25, 2013; is that correct?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And is this document, to your knowledge,</p> <p>9 that I've marked as No. 58, which is similar to the</p> <p>10 document I marked as No. 55, is this how the</p> <p>11 equipment finance agreement is kept in a file</p> <p>12 somewhere in Ascentium?</p> <p>13 A. I do not know, because I'm not located in</p> <p>14 Kingwood.</p> <p>15 Q. Okay.</p> <p>16 A. I know that when the documents are received</p> <p>17 in, they're scanned into our computer system.</p> <p>18 The piece of paper itself, I'm not sure</p> <p>19 where it goes to.</p> <p>20 Q. Are they always illegible like this?</p> <p>21 A. No, they're not.</p> <p>22 Q. Okay.</p> <p>23 A. And as I was telling Kevin yesterday, for a</p> <p>24 company that does as well as Ascentium, you'd think</p> <p>25 that they could invest in a little bit of a better</p>	<p style="text-align: right;">Page 116</p> <p>1 does that relate to that verbal authorization we</p> <p>2 reviewed earlier?</p> <p>3 A. Yes, it does.</p> <p>4 Q. Okay.</p> <p>5 All right. Let's turn to Page 4 of 15.</p> <p>6 A. Okay.</p> <p>7 Q. I believe this one got murdered by the</p> <p>8 scanner as well.</p> <p>9 A. Yes. It looks like it.</p> <p>10 Q. But if you look at the bold typed face</p> <p>11 paragraph above the signature, does this equipment</p> <p>12 finance agreement, which is the second Cairo deal,</p> <p>13 also include the language that that agreement was</p> <p>14 also a non-cancellable agreement?</p> <p>15 A. Yes. Same as the other one.</p> <p>16 Q. And if you turn the page, does Paragraph 5</p> <p>17 regarding payments also include the same language</p> <p>18 you reviewed earlier, to your recollection?</p> <p>19 A. Just reading it quickly again.</p> <p>20 Yes, it does.</p> <p>21 Q. Okay. If we look at Page 10 of 15 -- I</p> <p>22 mean, 10 of 15 titled "Commencement Agreement".</p> <p>23 A. Okay.</p> <p>24 Q. So is this a similar -- does this document</p> <p>25 serve the same purposes as the commencement</p>
<p style="text-align: right;">Page 115</p> <p>1 scanner. I don't know if they have several of them</p> <p>2 down there, and some are better than others, because</p> <p>3 some documents I look at that are scanned in are</p> <p>4 clear as a bell, and some are horrible. This one</p> <p>5 actually is more on the horrible, but I've seen it</p> <p>6 even worse.</p> <p>7 Q. Oh, wow.</p> <p>8 A. Yeah.</p> <p>9 Q. I couldn't imagine. Okay.</p> <p>10 All right. Let's go to -- all right.</p> <p>11 MR. MCKENZIE: I'm going to mark the next</p> <p>12 one as Exhibit 59.</p> <p>13 (Defendant's Exhibit 59 marked.)</p> <p>14 BY MR. MCKENZIE:</p> <p>15 Q. All right. So what does Exhibit 59 appear</p> <p>16 to be? You can take a minute to look at it.</p> <p>17 A. It appears to be documents that Ed Schuler</p> <p>18 faxed back to Maria Negri on January 24, 2013, which</p> <p>19 appears to be the Cairo Number 2 agreement.</p> <p>20 Executed documents.</p> <p>21 Q. All right. And earlier, we reviewed a</p> <p>22 transcript of a verbal authorization which was</p> <p>23 marked as Exhibit 57. Do you recall that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And is this Page 3 of 15 to Exhibit 59,</p>	<p style="text-align: right;">Page 117</p> <p>1 agreement we discussed in more detail with relation</p> <p>2 to the other financial agreement of Cairo?</p> <p>3 A. Yes, it does.</p> <p>4 Q. And then if we look at 13 of 15, a document</p> <p>5 titled "Delivery and Acceptance Certificate" --</p> <p>6 A. Okay.</p> <p>7 Q. -- does this document also serve the same</p> <p>8 purpose as the delivery and acceptance certificate</p> <p>9 we discussed earlier?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Is this -- if you look back -- let's look</p> <p>12 back at -- we reviewed, quickly, this equipment</p> <p>13 finance agreement for Agreement Number 2118557;</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Does this appear to be the same form used</p> <p>17 as with the first Cairo agreement, which is --</p> <p>18 A. Can I take a look --</p> <p>19 Q. -- marked as Defendant's Exhibit 58?</p> <p>20 A. Was it No. 58? No.</p> <p>21 Q. No, no, no. Excuse me. No. 56.</p> <p>22 A. No.</p> <p>23 Q. Yeah. Just take a look, because I want</p> <p>24 to...</p> <p>25 A. Yes. They're the same agreements.</p>

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<p style="text-align: right;">Page 118</p> <p>1 Q. Okay.</p> <p>2 MR. MCKENZIE: All right. This is going to</p> <p>3 be Number 60.</p> <p>4 (Defendant's Exhibit 60 marked.)</p> <p>5 BY MR. MCKENZIE:</p> <p>6 Q. All right. And what does Defendant's</p> <p>7 Exhibit 60 appear to be?</p> <p>8 A. Could I just read it, please?</p> <p>9 Q. Sure. Yeah. Review this. You can review</p> <p>10 all the pages.</p> <p>11 A. Okay. This is another fax from Ed Schuler</p> <p>12 to Maria Negri on January 24th, 2013, and it appears</p> <p>13 to be a copy of the two advanced rental checks on</p> <p>14 the Cairo 1 and Cairo 2 agreement. And I'm not</p> <p>15 quite sure why he attached another executed Cairo</p> <p>16 Number 2 agreement to the back of the fax, but</p> <p>17 apparently he did.</p> <p>18 Q. Okay.</p> <p>19 A. It looks a little bit clearer than the</p> <p>20 other one.</p> <p>21 Q. All right. So was this -- were these</p> <p>22 copies of checks that were mailed, or were these to</p> <p>23 provide information for the ACH?</p> <p>24 A. I do not know.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Exhibit 61 is a version of Equipment</p> <p>2 Finance Agreement Number 2118850 that was marked as</p> <p>3 Exhibit 16, and used in the deposition as taken by</p> <p>4 Ascentium of Andy Adams and Adams Tank employees.</p> <p>5 If you want to take a look at it, and we</p> <p>6 can talk about it.</p> <p>7 A. (Complies with request.)</p> <p>8 Okay.</p> <p>9 Q. Okay. So what is this document?</p> <p>10 A. This is a copy of the agreement for the</p> <p>11 Jackson location.</p> <p>12 Q. Is this Exhibit 61?</p> <p>13 MR. STINE: Yeah.</p> <p>14 A. Yeah.</p> <p>15 Q. All right. Let's go to the third page.</p> <p>16 A. Okay.</p> <p>17 Q. All right. What is this?</p> <p>18 A. This is an invoice submitted from Adams</p> <p>19 Tank to Ascentium for the Jackson equipment.</p> <p>20 Q. Okay. And does this document appear</p> <p>21 different than the other invoices that were</p> <p>22 attached?</p> <p>23 A. Yes, it does.</p> <p>24 Q. Okay. What's the date on this document?</p> <p>25 A. June 27th, 2013.</p>
<p style="text-align: right;">Page 119</p> <p>1 A. This would not be an ACH type of</p> <p>2 authorization, I don't believe.</p> <p>3 Q. Okay. Okay.</p> <p>4 A. And if you look at the payment histories,</p> <p>5 it's got a check number on it.</p> <p>6 Q. Okay.</p> <p>7 A. And I'm not sure if that corresponds with</p> <p>8 these, but it should.</p> <p>9 Q. Okay.</p> <p>10 A. But these were not -- this has nothing to</p> <p>11 do with ACH.</p> <p>12 Q. All right.</p> <p>13 A. Matter of fact, if you look at -- if you</p> <p>14 look at Exhibit 59 --</p> <p>15 Q. Okay.</p> <p>16 A. -- the second page in, where we tell them</p> <p>17 how much we need, \$2,341, there's the check for</p> <p>18 \$2,341.</p> <p>19 Q. Okay. Great.</p> <p>20 A. So it corresponds.</p> <p>21 Q. All right. Enough of that.</p> <p>22 MR. MCKENZIE: Next is going to be Exhibit</p> <p>23 61.</p> <p>24 (Defendant's Exhibit 61 marked.)</p> <p>25 BY MR. MCKENZIE:</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Okay. And who is the -- or excuse me. Why</p> <p>2 -- or do you know why the billed-to party is Phoenix</p> <p>3 Petroleum?</p> <p>4 A. Well, on an EFA --</p> <p>5 Q. Okay.</p> <p>6 A. -- the equipment is actually owned by the</p> <p>7 debtor. However, Ascentium pays for that equipment</p> <p>8 to the supplier, and places a lien on the collateral</p> <p>9 covered by that agreement.</p> <p>10 Q. So at what point is -- so, I mean, I guess</p> <p>11 at what point does the borrower own the collateral?</p> <p>12 MR. STINE: Object to the form.</p> <p>13 BY MR. MCKENZIE:</p> <p>14 Q. Do you know?</p> <p>15 A. I don't -- I don't know.</p> <p>16 Q. Okay.</p> <p>17 For all -- earlier, you said an EFA. Do</p> <p>18 you mean equipment finance agreement?</p> <p>19 A. Yes.</p> <p>20 Q. For all EFAs, does Ascentium have the</p> <p>21 borrower address the bill-to party? Is that</p> <p>22 standard operation?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 All right. And so if you look at this</p>

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<p>1 invoice, what does it show Adams Tank will be 2 providing to Phoenix Petroleum? 3 A. It shows that they should be delivering 4 fuel dispensers. I believe there were nine on this 5 invoice. If you want me to go back and count them, 6 I will. Nine fuel dispensers. 7 Q. Okay. 8 A. Hanging hardware. The Ruby Terminal 9 Point-of-Sale System, and the Veeder Root Tank 10 Monitoring System. 11 Q. So -- 12 A. And installation. 13 Q. So does this invoice -- when discussing the 14 dispensers -- 15 A. Okay. 16 Q. -- does this invoice appear to you to 17 indicate that they will be furnished in the future? 18 A. It indicates that this -- these are the 19 products that the debtor, Phoenix, wishes to obtain, 20 and it indicates that Adams Tank &amp; Lift will be 21 delivering and providing the items on the invoice. 22 Q. Okay. 23 All right. So let's skip -- do you ever 24 see the Adams Tank contract proposals to its 25 customer, in this case Phoenix Petroleum?</p>	<p>1 A. Yes. 2 Q. Okay. Was there only a UCC filed as to 3 Phoenix Petroleum for -- in relation to Equipment 4 Finance Agreement 2118850? 5 A. I'm not sure I understand what you're 6 asking. 7 Q. Was there ever a UCC financing statement 8 filed as to any other of the entities that were 9 guarantors under Equipment Finance Agreement 10 2118850? 11 A. I do not know. I don't believe so. 12 Q. Okay. 13 A. Otherwise, we would have had copies here. 14 Q. Okay. 15 All right. Then the next page is something 16 that I do not recall seeing in my documents. It's 17 called a real property waiver. 18 A. Uh-huh. 19 Q. Is that -- is that a document that you're 20 familiar with? 21 A. I'm semi-familiar with it. Yes. We don't 22 -- I don't see a lot of them, but I have seen them 23 before. 24 Q. And let me just confirm that there's one in 25 here. We can talk about it, and we can read it.</p>
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<p>1 A. Me personally? 2 Q. Uh-huh. 3 A. No. 4 Q. You don't? 5 Does Ascentium maintain copies of those 6 proposals in any form? 7 A. I don't know. 8 Q. Do you know that there's a -- I mean, do 9 you know that there's a difference in a proposal 10 between the borrower and their equipment supplier 11 and an invoice that's provided to the finance 12 company? 13 A. Yes, I do. 14 Q. Okay. 15 All right. Switching gears. The next 16 document is the UCC financing statement, which 17 appears to have a file date of June 28, 2013; is 18 that correct? 19 A. Correct. 20 Q. And so does -- it also appears that CT Lien 21 Solutions is the representation of filing; is that 22 correct? 23 A. Correct. 24 Q. What -- is CT Lien Solutions a third party 25 that files these UCCs for Ascentium?</p>	<p>1 No. Okay. Just generally, what's the 2 purpose of the real property waiver? 3 A. From what I understand, this is a document 4 that is signed by the property owner -- 5 Q. Uh-huh. 6 A. -- indicating that the collateral that 7 Ascentium has a lien on, that's being placed on this 8 property, should it ever have to be removed, it 9 would not be considered real property. It would be 10 considered personal property, and can be removed. 11 Because in the case of gas dispensers, you 12 know, they're bolted to the concrete, and a landlord 13 or a property owner may argue that, well, these have 14 now become part of real property. And this is a 15 waiver with the property owner advising Ascentium 16 that's not the case. If it needs to be removed, you 17 could remove it. We'll consider it personal 18 property. 19 Q. Okay. 20 A. That's my understanding of it. 21 Q. All right. Then we can -- all right. 22 So the next document appears to be a 23 guaranty; is that correct? 24 A. Yes. Correct. 25 Q. If you go to the second page, who's the</p>

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<p style="text-align: right;">Page 126</p> <p>1 guarantor?</p> <p>2 A. Falcon Entity, LLC.</p> <p>3 Q. Okay. And then on what date was this</p> <p>4 guaranty executed?</p> <p>5 A. June 27th, 2013.</p> <p>6 Q. All right. And then if we go to the next</p> <p>7 document, it also appears to be a guaranty; is that</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And who is that guarantor?</p> <p>11 A. Great American Travel Center, LLC.</p> <p>12 Q. Okay.</p> <p>13 All right. Let's look back at -- grab No.</p> <p>14 59.</p> <p>15 A. (Complies with request.)</p> <p>16 Okay.</p> <p>17 Q. All right. If you go to the -- if you</p> <p>18 review the signatures of Mr. Masoodzadehgan on the</p> <p>19 documents included with Defendant's Exhibit 59 --</p> <p>20 A. Okay.</p> <p>21 Q. -- and Defendant's Exhibit 61, do those</p> <p>22 appear to be different to you?</p> <p>23 A. The last name looks very very similar or</p> <p>24 the same. The "A" in the first name looks a bit</p> <p>25 different.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. The Cairo 1 and Cairo 2 exhibits.</p> <p>2 A. The answer is yes.</p> <p>3 Q. Okay.</p> <p>4 And is that the same for the delivery and</p> <p>5 acceptance certificate?</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 Isn't it true that Mr. Masoodzadehgan or</p> <p>9 his signatures on the delivery and acceptance ticket</p> <p>10 on 6/27/13 -- is that --</p> <p>11 A. I'm sorry. I didn't know that it was a</p> <p>12 question.</p> <p>13 Q. On the delivery and acceptance.</p> <p>14 A. Could you repeat that, please?</p> <p>15 Q. Yeah.</p> <p>16 What's the date that Mr. Masoodzadehgan's</p> <p>17 name was signed to the delivery and acceptance</p> <p>18 certificate?</p> <p>19 A. June 27th, 2013.</p> <p>20 Q. Okay.</p> <p>21 Okay. Let's look at -- okay.</p> <p>22 MR. MCKENZIE: This is going to be No. 62.</p> <p>23 (Defendant's Exhibit 62 marked.)</p> <p>24 MR. STINE: Let's have a look.</p> <p>25 MR. MCKENZIE: I've got you one.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Are you aware that Mr. Schuler testified in</p> <p>2 his deposition that he signed Mr. Masoodzadehgan's</p> <p>3 name to the January 24, 2013 --</p> <p>4 A. I'm not aware of that.</p> <p>5 Q. -- agreement? What significance do you</p> <p>6 think that has?</p> <p>7 MR. STINE: Object to the form.</p> <p>8 A. I'm not sure.</p> <p>9 Q. Okay.</p> <p>10 All right. Let's go to the next document</p> <p>11 in Exhibit 61.</p> <p>12 A. Okay.</p> <p>13 Q. It is a commencement agreement.</p> <p>14 A. Okay.</p> <p>15 Q. Does that appear -- if you want to -- I</p> <p>16 don't know if you can read that. There might be a</p> <p>17 more legible copy in the next one, the next exhibit.</p> <p>18 A. What would you like me to read?</p> <p>19 Q. Well, does this appear -- does this</p> <p>20 commencement agreement, as to Agreement Number</p> <p>21 2118850, serve the same purpose as the commencement</p> <p>22 agreement that was included with the agreement</p> <p>23 numbers -- the agreements that were referenced in</p> <p>24 Exhibits --</p> <p>25 A. The Cairo 1 and Cairo 2?</p>	<p style="text-align: right;">Page 129</p> <p>1 MR. STINE: Do you?</p> <p>2 MR. MCKENZIE: Yeah.</p> <p>3 MR. STINE: Thanks.</p> <p>4 BY MR. MCKENZIE:</p> <p>5 Q. All right. Take a look at Defendant's</p> <p>6 Exhibit 62, and just let me know after you've had an</p> <p>7 opportunity to just peruse through.</p> <p>8 A. This looks like the same documents we just</p> <p>9 looked at in Exhibit 61, only it looks like these</p> <p>10 were e-mailed from --</p> <p>11 Q. Okay.</p> <p>12 A. -- Phoenix Petroleum to Maria Negri.</p> <p>13 Q. Instead of faxed?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. All right. So let's -- all right.</p> <p>16 So what date were these items -- for the record,</p> <p>17 Selina Barnard is my assistant who printed this</p> <p>18 e-mail, and that's why her name is on the top.</p> <p>19 A. Okay.</p> <p>20 Q. So let's see.</p> <p>21 All right. So when was this document</p> <p>22 e-mailed to Ascentium from Phoenix?</p> <p>23 A. June 27th, 2013.</p> <p>24 Q. Okay. All right. Let's just go through --</p> <p>25 let's look at the first page.</p>

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<p style="text-align: right;">Page 130</p> <p>1 What is that first page?</p> <p>2 A. The ACH verbal authorization form.</p> <p>3 Q. All right. And let's look at what we will</p> <p>4 call Exhibit 63.</p> <p>5 (Defendant's Exhibit 63 marked.)</p> <p>6 BY MR. MCKENZIE:</p> <p>7 Q. I only have, for whatever reason, two of</p> <p>8 these. Share that one. I'm sorry.</p> <p>9 While he's looking, I'll do the lead-in.</p> <p>10 So Exhibit 63 or Defendant's Exhibit 63 is</p> <p>11 a transcript of a telephone conference that was</p> <p>12 recorded and provided to Defendants as .wav file</p> <p>13 469, and it's a call between an Ascentium</p> <p>14 representative and Ataollah Masoodzadehgan.</p> <p>15 Review that just to yourself, and then we</p> <p>16 can talk about it.</p> <p>17 A. (Complies with request.)</p> <p>18 Okay.</p> <p>19 Q. All right. So read -- read aloud 20</p> <p>20 through 22.</p> <p>21 A. (Reading) "Ascentium rep: Do you authorize</p> <p>22 Ascentium Capital to release the first disbursement</p> <p>23 to Adams Tank &amp; Lift?"</p> <p>24 I'll say Ataollah.</p> <p>25 (Reading) "Mr. -- "</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Sorry. Which exhibit are you on?</p> <p>2 Q. Oh, I'm sorry. We're back on Exhibit 62.</p> <p>3 A. 62? Okay.</p> <p>4 Q. Sorry about that.</p> <p>5 A. That's okay.</p> <p>6 Q. And the third page.</p> <p>7 A. Okay.</p> <p>8 Q. All right. So this is Equipment Finance</p> <p>9 Agreement Number 2118850; correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And where -- what project site does</p> <p>12 this relate to?</p> <p>13 A. The Jackson site.</p> <p>14 Q. Okay. Does this form appear different than</p> <p>15 the forms that were used with the Cairo agreements?</p> <p>16 A. Yes.</p> <p>17 Q. And why is that?</p> <p>18 A. It looks like there's a different date in</p> <p>19 the lower left-hand corner than the first two</p> <p>20 agreements --</p> <p>21 Q. Okay.</p> <p>22 A. -- with Cairo, so it must have been revised</p> <p>23 --</p> <p>24 Q. Okay.</p> <p>25 A. -- between those and this one.</p>
<p style="text-align: right;">Page 131</p> <p>1 Whatever his name is, he answered yes.</p> <p>2 (Reading) "Ascentium rep: Do you authorize</p> <p>3 Ascentium Capital to pay your equipment supplier,</p> <p>4 and start your agreement? Ataollah: The answer is</p> <p>5 yes."</p> <p>6 Q. All right. Now go to the next page.</p> <p>7 A. (Complies with request.)</p> <p>8 Okay.</p> <p>9 Q. And read that -- you can just read that</p> <p>10 first line.</p> <p>11 A. (Reading) "Ascentium rep: Okay. That's</p> <p>12 it."</p> <p>13 Q. Okay. So -- so what -- what does appear to</p> <p>14 be the purpose of this verbal authorization?</p> <p>15 A. It's Ataollah authorizing Ascentium to fund</p> <p>16 90 percent of the deal to Adams Tank.</p> <p>17 Q. Okay. And does this verbal authorization</p> <p>18 coincide with the authorization to perform verbal</p> <p>19 verification, which is included with these e-mail</p> <p>20 documents marked as Defendant's Exhibit 62?</p> <p>21 A. Yes, it does.</p> <p>22 Q. Okay. All right.</p> <p>23 All right. So tell me what -- all right.</p> <p>24 So this next document -- this next page is Equipment</p> <p>25 Finance Agreement 2118850; correct?</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Is it your understanding that this revised</p> <p>2 form serves the same -- I mean, it's the same</p> <p>3 function as the prior form used for Cairo?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 All right. So let's look at -- let's look</p> <p>7 at Section 4, titled "Payments".</p> <p>8 A. Okay.</p> <p>9 Q. If you'll just read aloud the -- all those</p> <p>10 words that are in all caps.</p> <p>11 A. (Reading) "Your obligation to make payment</p> <p>12 and pay other amounts due hereunder is absolute and</p> <p>13 unconditional, and not subject to abatement,</p> <p>14 reduction, or setoff for any reason whatsoever.</p> <p>15 This is a non-cancellable agreement. This agreement</p> <p>16 -- "</p> <p>17 Excuse me.</p> <p>18 (Reading) " -- the terms of which have been</p> <p>19 freely negotiated by each party is -- "</p> <p>20 I'm sorry. My eyes again.</p> <p>21 Q. That's all right.</p> <p>22 A. (Reading) " -- is also subject to the terms</p> <p>23 and conditions of the following page, which is made</p> <p>24 part hereof, and which debtor and secured party</p> <p>25 acknowledge they have read and accepted."</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q. And now, is that language similar to the</p> <p>2 language we read in relation to Cairo 1 and Cairo 2</p> <p>3 agreements --</p> <p>4 A. I --</p> <p>5 Q. -- earlier? Just in a little different</p> <p>6 form?</p> <p>7 A. I believe it's -- I don't know if it's</p> <p>8 verbatim --</p> <p>9 Q. Right.</p> <p>10 A. -- but it's the same.</p> <p>11 Q. Okay.</p> <p>12 A. It's meant to mean the same thing.</p> <p>13 Q. Right.</p> <p>14 All right. If we skip to the commencement</p> <p>15 agreement, which is, I think, the 7th page back.</p> <p>16 A. Okay.</p> <p>17 Q. You got it?</p> <p>18 A. Yeah.</p> <p>19 Q. Read the last two sentences of that first</p> <p>20 opening paragraph.</p> <p>21 A. (Reading) "The equipment is being delivered</p> <p>22 at various times, and the vendor or vendors of the</p> <p>23 equipment have to be paid for each item of equipment</p> <p>24 at or before its delivery to you. You agree to</p> <p>25 commence the initial non-cancellable terms of the</p>	<p style="text-align: right;">Page 136</p> <p>1 A. (Complies with request.)</p> <p>2 Okay. I basically read the important</p> <p>3 parts.</p> <p>4 Q. So is it still your belief that the real</p> <p>5 property waiver is for the purpose of allowing the</p> <p>6 borrower to remove the financed equipment from the</p> <p>7 property when it's leasing the property, and it</p> <p>8 doesn't own the property?</p> <p>9 A. Not the borrower. Ascentium would be --</p> <p>10 Q. Okay.</p> <p>11 A. -- the party removing it.</p> <p>12 Q. So this -- this document -- does this</p> <p>13 document allow Ascentium to remove the borrower's</p> <p>14 property when the borrower is leasing?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Okay.</p> <p>17 A. Because it's saying that the landlord</p> <p>18 waives any claim --</p> <p>19 Q. Okay.</p> <p>20 A. -- to the equipment.</p> <p>21 Q. All right.</p> <p>22 Okay. All right.</p> <p>23 MR. MCKENZIE: This is going to be No. 64.</p> <p>24 (Defendant's Exhibit 64 marked.)</p> <p>25 MR. STINE: Was No. 63 that .wav file? The</p>
<p style="text-align: right;">Page 135</p> <p>1 agreement immediately, even though items of</p> <p>2 equipment remain to be delivered to and accepted by</p> <p>3 you from one or more vendors."</p> <p>4 Q. Does that appear to be the same language</p> <p>5 that was used in the commencement agreement attached</p> <p>6 or included with the Cairo 1 and Cairo 2 --</p> <p>7 A. Yes, it does.</p> <p>8 Q. -- agreements?</p> <p>9 Okay.</p> <p>10 All right. And if you'll look at the</p> <p>11 delivery and acceptance ticket.</p> <p>12 A. (Complies with request.)</p> <p>13 Okay.</p> <p>14 Q. Does that appear to be the same form that</p> <p>15 we've discussed previously, and which was used in</p> <p>16 connection with the Cairo 1 and 2 equipment finance</p> <p>17 agreements?</p> <p>18 A. Yes, it does.</p> <p>19 Q. Okay.</p> <p>20 And the next one is the real property</p> <p>21 waiver.</p> <p>22 A. Okay.</p> <p>23 Q. This one is more legible. I mean, I know</p> <p>24 it's small print, but if you'll just read over it to</p> <p>25 yourself, and then I'm going to do the same thing.</p>	<p style="text-align: right;">Page 137</p> <p>1 transcript of the .wav file?</p> <p>2 THE WITNESS: Yeah. No. 63 was the .wav</p> <p>3 file.</p> <p>4 MR. STINE: Okay.</p> <p>5 BY MR. MCKENZIE:</p> <p>6 Q. All right. So review this e-mail and</p> <p>7 attachments, and explain to me what's going on here.</p> <p>8 A. Well, this appears to be two e-mails from</p> <p>9 me to Andy Adams, one dated December 17th, 2014, one</p> <p>10 dated January 2nd, 2015, asking Andy to give me a</p> <p>11 call to discuss the attached invoice for the Jackson</p> <p>12 job of \$240,000.</p> <p>13 Q. So at this point in December of 2014, what</p> <p>14 are you thinking has happened?</p> <p>15 A. I'm thinking -- I'm trying to remember the</p> <p>16 timing, but this must have been right after we</p> <p>17 learned that there was no collateral at the Jackson</p> <p>18 site. So I must have called Andy, because it says</p> <p>19 "Andy, per our discussion". And I must have called</p> <p>20 him, and said, "Andy, I've got an invoice from you</p> <p>21 for \$240,000. We did a site inspection, and there's</p> <p>22 nothing there."</p> <p>23 Q. Okay.</p> <p>24 A. And he probably said, well, what invoice</p> <p>25 are you talking about? Send me a copy of the</p>

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Page 138	<p>1 invoice you're talking about. And that's apparently</p> <p>2 what I did.</p> <p>3 Q. Okay.</p> <p>4 MR. MCKENZIE: All right. This next one is</p> <p>5 going to be No. 65.</p> <p>6 (Defendant's Exhibit 65 marked.)</p> <p>7 BY MR. MCKENZIE:</p> <p>8 Q. Take a look at that, and then...</p> <p>9 A. This is an e-mail from me to Andy Adams on</p> <p>10 January 12th, 2015. If I remember correctly, he</p> <p>11 said, yeah, the nine pumps are in storage. The nine</p> <p>12 dispensers. The site is not going to open. And I</p> <p>13 must have asked him if he would be able to find us a</p> <p>14 buyer for those nine dispensers.</p> <p>15 Q. Okay.</p> <p>16 Do you recall if he offered to try to find</p> <p>17 buyers?</p> <p>18 A. Yes. I believe he did.</p> <p>19 Q. Okay.</p> <p>20 A. Yeah. And because, at the time, I thought</p> <p>21 we were about to obtain possession of them.</p> <p>22 Q. Gotcha.</p> <p>23 A. But that was before we found out that they</p> <p>24 weren't ours.</p> <p>25 Q. All right.</p>	Page 140	<p>1 Providence Capital yet? Is that what your testimony</p> <p>2 is?</p> <p>3 A. I believe that's what my -- I believe so.</p> <p>4 Yes.</p> <p>5 Q. Okay.</p> <p>6 MR. MCKENZIE: All right. Next one is</p> <p>7 going to be 67.</p> <p>8 (Defendant's Exhibit 67 marked.)</p> <p>9 BY MR. MCKENZIE:</p> <p>10 Q. So if you look -- let's look -- have you</p> <p>11 reviewed this?</p> <p>12 A. I'm reading it now.</p> <p>13 Q. Oh, I'm sorry.</p> <p>14 A. I was looking at all the attachments first.</p> <p>15 Q. No, no. That's fine. Take your time. Let</p> <p>16 me know when you're finished, and then we can talk</p> <p>17 about it.</p> <p>18 A. Okay.</p> <p>19 MR. STINE: Take your time with that</p> <p>20 exhibit, and I'll be right back.</p> <p>21 (Mr. Stine exits.)</p> <p>22 THE WITNESS: Okay.</p> <p>23 (Mr. Stine enters.)</p> <p>24 BY MR. MCKENZIE:</p> <p>25 Q. All right.</p>
Page 139	<p>1 MR. MCKENZIE: Next will be No. 66.</p> <p>2 (Defendant's Exhibit 66 marked.)</p> <p>3 BY MR. MCKENZIE:</p> <p>4 Q. All right. So read over this, and then we</p> <p>5 can talk about it.</p> <p>6 A. Well, this is me e-mailing Andy again, and</p> <p>7 copying Len Baccaro on 2/24/15. Once again,</p> <p>8 attaching a copy of the Jackson invoice, asking Andy</p> <p>9 for the serial numbers on the nine dispensers,</p> <p>10 because we had then, at that time, did the site</p> <p>11 inspection, and we wanted to make sure the serial</p> <p>12 numbers that Andy had in his records and what our</p> <p>13 site inspections showed were the same serial</p> <p>14 numbers.</p> <p>15 Q. Okay.</p> <p>16 A. This was before we were aware of Providence</p> <p>17 Capital to this -- to these dispensers.</p> <p>18 Q. So --</p> <p>19 A. Still thought that we had a proper lien --</p> <p>20 Q. Okay.</p> <p>21 A. -- on these dispensers at the time of this</p> <p>22 e-mail.</p> <p>23 Q. All right. So do you know -- so, okay, so</p> <p>24 at this point, February 24, 2015, you did not know</p> <p>25 about -- or excuse me -- Ascentium was not aware of</p>	Page 141	<p>1 A. Okay. I looked at this.</p> <p>2 Q. All right. So the -- if we go back to the</p> <p>3 second page, the first, you know, the first e-mail</p> <p>4 in the chain is at the bottom.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Is that the same e-mail we just talked</p> <p>7 about in the previous exhibit?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Okay. So at the bottom of Page 1 is Mr.</p> <p>10 Adams' response; is that correct?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And then -- and then your response is at</p> <p>13 the top of the e-mail dated March 9, 2015; is that</p> <p>14 correct?</p> <p>15 A. Yes, it is.</p> <p>16 Q. So what -- what transpired in between</p> <p>17 February 25th, Mr. Adams' response, and your</p> <p>18 response dated five -- I mean, March 9, 2015?</p> <p>19 A. I do not remember.</p> <p>20 Q. And then did you have a chance to review</p> <p>21 the attachments to your e-mail?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Do you recall, were those attached</p> <p>24 documents provided by Mr. Adams at some previous</p> <p>25 time; or what?</p>

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<p style="text-align: right;">Page 142</p> <p>1 A. When he answered my e-mail is the first 2 time I believe that I had seen these attachments. 3 Q. Okay. 4 A. Other than the invoice for \$240,000 -- 5 Q. Right. 6 A. -- which we already had. 7 Q. And one thing you say in your e-mail is: 8 (Reading) "The serial numbers from our 9 inspector are attached, dot, dot, dot. Why don't 10 these serial numbers match up to the doc you 11 attached above?" 12 Do you recall that? 13 A. I -- 14 Q. Do you remember, like, what was going on 15 during this time period, or you're just going off 16 what's written in this e-mail? 17 A. I vaguely remember that we had an 18 inspection done at the storage facility. 19 Q. Is that the inspection report that we 20 discussed earlier? 21 A. It was one of them. 22 Q. Okay. 23 A. We discussed numerous inspection reports. 24 Q. Yeah. Yeah. Right. 25 A. It was the one that we did at the Jones</p>	<p style="text-align: right;">Page 144</p> <p>1 Jackson invoice, which was \$240,000. This, I think, 2 was the third -- the second or third time I had sent 3 it to him. 4 Q. Okay. 5 A. So he knew specifically that I was dealing 6 -- speaking about -- 7 Q. Jackson? 8 A. -- the pump -- the nine pumps that was 9 supposed to be at Jackson. 10 Q. Okay. All right. 11 MR. MCKENZIE: All right. This is going to 12 be No. 68. 13 (Defendant's Exhibit 68 marked.) 14 BY MR. MCKENZIE: 15 Q. Do you recall seeing this e-mail to Mr. 16 Adams? 17 A. Yes, I do. I have to read it, though. 18 Q. Oh, yeah. Please. 19 A. I'm sure I sent it. 20 (Refers to document.) 21 Okay. 22 Q. All right. So let's go down. Well, what 23 does this -- I mean, what is the point of this 24 e-mail? What are you -- 25 A. This appears to be an e-mail that I sent to</p>
<p style="text-align: right;">Page 143</p> <p>1 warehouse facility. 2 Q. In February of 2015? 3 A. I believe that was -- I believe that was 4 when it was done. Yeah. 5 Q. Okay. 6 A. And the inspection -- the inspection showed 7 that nine pumps were there. I think they were 8 shrink wrapped or something, and he's got the serial 9 numbers. And then I asked Andy for the serial 10 numbers that he had on those same pumps. 11 And from what he sent me here, Page 5 of 12 this attachment of this exhibit, the numbers on this 13 piece of paper didn't match up, I believe, if I can 14 remember correctly, with the numbers on the 15 inspection report. 16 Q. So if you go -- if you go back a few more 17 pages to the Wayne invoice -- 18 A. Uh-huh. 19 Q. -- if you look to "ship to" location, and 20 it says Cairo, Georgia -- do you see that? 21 A. Yes, I do. 22 Q. Does it appear that Mr. Adams might have 23 been confused about what equipment you were asking 24 about? 25 A. I don't believe so, because I attached the</p>	<p style="text-align: right;">Page 145</p> <p>1 Andy after we had discovered that Providence Capital 2 was laying claim to the nine pumps in the Jackson 3 warehouse. So I'm -- what I did was, I attached 4 Andy's three invoices, Cairo 1, and I listed the 5 serial numbers of the 10 pumps. I attached his 6 invoice for Cairo 2, without a contract number on 7 it, and I listed the cooler and the two canopies. 8 And then I sent Andy another copy of his invoice for 9 the Jackson contract showing nine pumps, no serial 10 numbers. 11 I didn't have them, because what our 12 inspection showed and what Andy sent on his previous 13 e-mail showed it didn't match up. 14 So bottom line is, to make a long story 15 short, my last sentence -- my last two sentences: 16 (Reading) "So the question is, where are 17 our nine pumps that are listed on your invoice dated 18 6/27/13? We paid for 19 pumps", meaning Cairo and 19 Jackson, "and we've only found 10 in Cairo." 20 Q. So -- okay. So if you look at the first 21 two paragraphs -- 22 A. Uh-huh. 23 Q. -- is that where you're discussing the two 24 Cairo invoices? 25 A. First two paragraphs?</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q. Well, I'm sorry. The third and fourth 2 paragraph. 3 A. Hold on one second. 4 (Refers to documents.) 5 So what was your question? I'm sorry. 6 Q. Okay. So at the end of the fourth 7 paragraph -- 8 A. Uh-huh. 9 Q. -- isn't it true you say: 10 (Reading) "No issues or problems with this 11 one either." 12 A. That's what I -- 13 Q. (Reading) "Here's where it gets confusing." 14 So -- so are you all -- is this you telling 15 Andy that you've got all your collateral at Cairo? 16 Is that -- was that your understanding at the time? 17 A. Yes. What I was saying was, on -- in 18 Paragraph 3, we paid for 10 dispensers. Your serial 19 numbers and Wayne's serial numbers matched up. 20 Q. Okay. 21 A. We've confirmed that those 10 pumps are 22 there. The fourth paragraph, I'm saying we paid for 23 a 12-door cooler, and the canopies, and those are 24 there. 25 Q. Okay. Gotcha.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. And what was the purpose of -- I mean, what 2 were you all trying to get from Andy? 3 A. His explanation as to what happened with 4 the Jackson equipment, mostly. I mean, that was -- 5 Q. Yeah. 6 A. -- most of what Kevin was trying to find 7 out. 8 Q. Was Ascentium targeting Andy as a potential 9 defendant at this point? 10 A. It's possible. I mean, we really didn't 11 understand what was happening or what happened. 12 Q. Uh-huh. 13 A. We laid out a lot of money, and there was 14 no collateral behind that money that was -- went out 15 the door, the \$216,000. Correct? 16 Q. Right. 17 A. So I think we were trying to understand, 18 get Andy's side of the story, as to what happened at 19 that point. Get his explanation. 20 Q. Okay. 21 MR. MCKENZIE: All right. And the next one 22 will be No. 70. 23 (Defendant's Exhibit 70 marked.) 24 BY MR. MCKENZIE: 25 Q. Have you seen this -- do you recall this</p>
<p style="text-align: right;">Page 147</p> <p>1 All right. So on the attachments to this 2 e-mail, I think you just said -- but is that your 3 handwriting on these attachments? 4 A. Yes. 5 Q. Okay. All right. 6 MR. MCKENZIE: All right. Okay. This is 7 going to be No. 69. 8 (Defendant's Exhibit 69 marked.) 9 BY MR. MCKENZIE: 10 Q. All right. Start at the back, and review 11 this e-mail chain. 12 A. (Complies with request.) 13 Q. All right. So -- 14 A. Okay. 15 Q. So what's going on, you know, during the 16 course of these e-mails back and forth behind the 17 scenes at Ascentium? 18 A. Well, we were in contact, obviously, with 19 Kevin and his firm, and engaged him in this matter, 20 and he was trying to speak with Andy to maybe get 21 the story from him as opposed to Andy speaking with 22 me most of the prior months. 23 It looks like Kevin was trying to get in 24 touch with Andy to speak with him directly, and it 25 looks like they kept missing each other.</p>	<p style="text-align: right;">Page 149</p> <p>1 e-mail and the attached affidavit? 2 A. I recall the affidavit. Yes. I mean, not 3 off the top of my head, but I remember seeing it 4 before -- 5 Q. Did you -- 6 A. -- in the past. 7 Q. Did you contribute in drafting the 8 affidavit? 9 A. In the drafting of it? No. 10 Q. Did you contribute -- 11 A. I mean, I gave Kevin the facts at that 12 point in time as to what I understood -- 13 Q. Okay. 14 A. -- the facts to be, but I didn't draft the 15 language or anything. 16 Q. Gotcha. 17 A. If that's what you meant. 18 Q. But you contributed information to the 19 affidavit? 20 A. Correct. To Kevin. That's correct. 21 Q. And what was that information based on? 22 A. Everything I knew regarding the three 23 contracts up and to that point in time. 24 Q. Okay. And what -- on April 20th, 2015, do 25 you recall what the conversations at Ascentium are</p>

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<p style="text-align: right;">Page 150</p> <p>1 about how you all are going to handle these Phoenix 2 transactions? 3 A. Could you repeat that? I'm sorry. 4 Q. Yeah. 5 At the time this e-mail was sent on April 6 20th, 2015, what's -- what conversations were you 7 all having at Ascentium about how to handle this 8 Phoenix transaction? 9 A. Well, from what I recall, we wanted to get 10 the facts from Andy, the way he understood them. 11 That's why this affidavit was prepared -- 12 Q. Uh-huh. 13 A. -- for Andy to confirm in writing what he 14 had told Kevin over the phone. 15 And I don't think, at that point in time, 16 we knew where we were going, or going to end up with 17 this, although I'm sure it was in the back of some 18 people's minds that Andy did something that just 19 didn't make sense to us, and we needed to get to the 20 bottom of it. Of course, we were out a lot -- we 21 were losing a lot of money at this point. 22 Q. Right. 23 A. Phoenix had stopped paying. 24 Q. Okay. 25 Okay. All right. There's about 20 of</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. All right. So read that e-mail chain, and 2 then we'll go back, and then forward. 3 A. Start in the back? 4 Q. Yeah. 5 All right. This is just a background -- 6 just had some background question. Who is Lon 7 Thompson? 8 A. Lon Thompson is the head of the VSR, which 9 are Vendor Service Reps. They handle a lot of the 10 agreements, executed agreements, when they are 11 received. They put the file together once the EFA 12 is executed, and -- 13 Q. Okay. 14 A. -- they -- they are the ones who eventually 15 get the deal funded -- 16 Q. Gotcha. 17 A. -- after all the documents are received, 18 and it goes through the process. 19 Q. All right. So if you'll look at the -- 20 there's an October 3, 2014 e-mail from Maria to Len 21 Baccarro and Lon Thompson, and it references a site 22 and verbal. Do you know what those terms mean? 23 A. Site inspection and verbal verification. 24 Q. And it says: 25 (Reading) "We need a site and verbal done."</p>
<p style="text-align: right;">Page 151</p> <p>1 these (indicating.) I'm just kidding. Take this 2 notebook. 3 A. Is this for me? 4 Q. Yeah. 5 A. Okay. 6 Q. Everywhere you see red, we're going to talk 7 about -- I'm just kidding. 8 All right. So -- 9 THE WITNESS: Want me to put this up here 10 so you can see it also? 11 MR. STINE: Yeah. 12 MR. MCKENZIE: I don't have copies of this. 13 I'm new at this master exhibit. 14 MR. STINE: That's fine. 15 BY MR. MCKENZIE: 16 Q. All right. So go to Exhibit 23. 17 (Exhibit 23 previously marked.) 18 MR. STINE: By the way, is this all the 19 exhibits from -- 20 MR. MCKENZIE: Len Baccarro. 21 MR. STINE: Okay. But not exhibits from 22 the depositions in Florida? Gotcha. You said 22 or 23 23? 24 MR. MCKENZIE: No. 23. 25 BY MR. MCKENZIE:</p>	<p style="text-align: right;">Page 153</p> <p>1 Are these site inspections, verbal 2 verifications in addition to the verbal verification 3 that was done at the beginning of the commencement 4 of the contracts? 5 A. I don't think so. I don't believe so. 6 Well, I'm getting my dates mixed up. This is 7 October '14. Yeah, this would have been addition -- 8 in addition to, because it was a year later. 9 Q. Okay. And is this around the time that -- 10 A. It looks like this is around the time where 11 we were getting ready to -- 12 Q. The default occurred? 13 A. When the default occurred, but we were 14 getting ready to pay the last 10 percent. And 15 before we did that, it looks like we were saying, 16 well, before we do this last 10 percent, we need a 17 site inspection done, and the second verbal. So the 18 follow-up verbal. Not the pre-fund 90 percent 19 verbal. 20 Q. So -- 21 A. I'm guessing that's what this means. 22 Q. And I know that you weren't a party to 23 these e-mails, by the way, but do you think that 24 this -- this conversation is what led to the October 25 site inspection, that we discussed earlier, at the</p>

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<p style="text-align: right;">Page 154</p> <p>1 Jackson facility?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. All right.</p> <p>4 All right. Go to Exhibit 31.</p> <p>5 (Exhibit 31 previously marked.)</p> <p>6 All right. So it's just a one-page e-mail;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. What -- is there -- do you recall sending</p> <p>10 this e-mail to Jerry Noon, dated April 30, 2015?</p> <p>11 A. I do not.</p> <p>12 Q. You don't? Where you say "fyi"?</p> <p>13 A. I do not recall.</p> <p>14 Q. Okay. If you look up at the top, an e-mail</p> <p>15 from Jerry Noon, dated April 30, 2015.</p> <p>16 A. Uh-huh. Okay.</p> <p>17 Q. To Len Baccarro, Hernon Traversone, Tony</p> <p>18 Campi. And it has attachments?</p> <p>19 A. Correct.</p> <p>20 Q. Do you -- is this -- are you sending Jerry</p> <p>21 Noon those attachments in the previous e-mail?</p> <p>22 MR. STINE: Just to clarify, are you asking</p> <p>23 the earlier e-mail --</p> <p>24 A. I know what he's asking.</p> <p>25 MR. STINE: -- that was sent to Jerry, did</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. MCKENZIE: For sure.</p> <p>2 MR. STINE: But if they're just either</p> <p>3 drafts or the final affidavit that Mr. Adams signed,</p> <p>4 which that's what they appear to be, I don't have</p> <p>5 any problem with producing those attachments.</p> <p>6 So one way to do it would be to see</p> <p>7 probably if you were able to locate, Tony -- not</p> <p>8 this minute, obviously, but when you get back to</p> <p>9 your office, if you can locate the original e-mail</p> <p>10 you sent Jerry with the attachments --</p> <p>11 THE WITNESS: Uh-huh.</p> <p>12 MR. STINE: -- and then forward that to me</p> <p>13 with the attachments, and then I can send it to him.</p> <p>14 THE WITNESS: Here's the problem. Look at</p> <p>15 the date.</p> <p>16 MR. STINE: April --</p> <p>17 THE WITNESS: It's more than 12 months ago;</p> <p>18 right?</p> <p>19 MR. STINE: Yeah.</p> <p>20 THE WITNESS: You remember our IT</p> <p>21 department? I'm only able to access e-mails going</p> <p>22 back 12 months. However, if I do need something</p> <p>23 going back further, I have to go through IT.</p> <p>24 MR. STINE: IT.</p> <p>25 THE WITNESS: I have to put in a trouble</p>
<p style="text-align: right;">Page 155</p> <p>1 that include the attachment?</p> <p>2 BY MR. MCKENZIE:</p> <p>3 Q. Yeah. I'm just curious how --</p> <p>4 A. Yes, it did. In other words, I e-mailed</p> <p>5 Jerry with the attachments saying fyi, look at the</p> <p>6 attachments. This is for your information. And</p> <p>7 then he forwarded those attachments to others in the</p> <p>8 organization.</p> <p>9 Q. Okay. Would you -- would you have these</p> <p>10 attachments? Like would you be able to get these</p> <p>11 attachments?</p> <p>12 MR. STINE: Yeah.</p> <p>13 MR. MCKENZIE: Okay.</p> <p>14 MR. STINE: Well, okay, I think the way we</p> <p>15 can do this, so -- I mean, I can tell from the</p> <p>16 subject line --</p> <p>17 MR. MCKENZIE: We might come across them.</p> <p>18 THE WITNESS: One of them is the affidavit.</p> <p>19 MR. STINE: The affidavit. And my guess is</p> <p>20 -- well, I'm not even sure how many attachments</p> <p>21 there are. I guess there's a couple of ways to</p> <p>22 approach this. So I don't mind -- I need to look at</p> <p>23 the attachments, just to double check they are what</p> <p>24 they appear to be, as opposed to, like, being a memo</p> <p>25 from me or something.</p>	<p style="text-align: right;">Page 157</p> <p>1 ticket.</p> <p>2 MR. STINE: Okay.</p> <p>3 THE WITNESS: So, I mean, yes, I can get it</p> <p>4 eventually. Yes. I can't get it tomorrow or the</p> <p>5 next day.</p> <p>6 MR. MCKENZIE: Okay. Well, we'll see --</p> <p>7 MR. STINE: I don't mind --</p> <p>8 MR. MCKENZIE: It may pop up later like in</p> <p>9 a chain or something, but I don't think it does. So</p> <p>10 --</p> <p>11 MR. STINE: I don't mind trying to --</p> <p>12 THE WITNESS: Would you be able to e-mail</p> <p>13 me to remind me to try to get that?</p> <p>14 MR. STINE: Yeah. I don't mind trying to</p> <p>15 find it for you.</p> <p>16 MR. MCKENZIE: Just to make -- I'm sure</p> <p>17 it's something I've seen, but -- okay.</p> <p>18 MR. STINE: So this is from -- for</p> <p>19 reference purposes, this is Exhibit 31 from Len</p> <p>20 Baccarro's deposition.</p> <p>21 And am I right, Collier, that if we find</p> <p>22 the original e-mail that he sent to Mr. Noon with</p> <p>23 the attachments intact, that's what you want to see?</p> <p>24 MR. MCKENZIE: Yeah.</p> <p>25 MR. STINE: Yeah.</p>

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<p style="text-align: right;">Page 158</p> <p>1 BY MR. MCKENZIE:</p> <p>2 Q. Okay. So let's look at Exhibit 32.</p> <p>3 (Exhibit 32 previously marked.)</p> <p>4 A. Okay.</p> <p>5 Q. And this appears to be correspondence</p> <p>6 between the same group of individuals related to the</p> <p>7 attachment that we don't have.</p> <p>8 But read those, and then we can talk about</p> <p>9 them.</p> <p>10 A. Okay.</p> <p>11 (Complies with request.)</p> <p>12 MR. STINE: For the record, Collier, are</p> <p>13 these notations yours, or were they produced that</p> <p>14 way?</p> <p>15 MR. MCKENZIE: I don't remember.</p> <p>16 MR. STINE: I don't remember either.</p> <p>17 MR. MCKENZIE: I don't remember any</p> <p>18 discussion of that when I was reading Len Baccarro's</p> <p>19 deposition, but --</p> <p>20 MR. STINE: He may have done it during the</p> <p>21 deposition with a pen.</p> <p>22 MR. MCKENZIE: It could have been, and we</p> <p>23 didn't know it. Yeah.</p> <p>24 MR. STINE: Okay. It doesn't matter.</p> <p>25 MR. MCKENZIE: But we know that you didn't</p>	<p style="text-align: right;">Page 160</p> <p>1 A. I read it twice. The only thing I could</p> <p>2 understand as to what he's saying is, he's surprised</p> <p>3 that we have an issue with Andy. He's one of the</p> <p>4 top 10 Wayne distributors, I guess, in the country.</p> <p>5 And Len has been dealing with him for 10 years, and</p> <p>6 has never had an issue, and he's trying to make</p> <p>7 sense of all of this. That's why I think he says</p> <p>8 the word exhale.</p> <p>9 Q. And why does he say, "Boy, does this sound</p> <p>10 familiar"?</p> <p>11 A. That's the part of the e-mail I do not</p> <p>12 understand. I do not understand what he means by</p> <p>13 that.</p> <p>14 Q. Does Len Baccarro have a reputation for</p> <p>15 originating troubled loans?</p> <p>16 A. Not to my knowledge, no.</p> <p>17 Q. All right. Let's look at 33.</p> <p>18 (Exhibit 33 previously marked.)</p> <p>19 BY MR. MCKENZIE:</p> <p>20 Q. So if you read that -- I mean, read all of</p> <p>21 it, but --</p> <p>22 A. Well, I've already read up to here</p> <p>23 (indicating).</p> <p>24 Q. Okay. Perfect.</p> <p>25 A. So after Hernon says --</p>
<p style="text-align: right;">Page 159</p> <p>1 do it. So.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. MCKENZIE:</p> <p>4 Q. Okay. So who is Hernon Traversone?</p> <p>5 A. Hernon Traversone is the -- is an executive</p> <p>6 vice president of credit risk. He's the top credit</p> <p>7 guy in the company.</p> <p>8 Q. Okay. So is this -- when you send this --</p> <p>9 whatever you sent on April 30th --</p> <p>10 A. Right.</p> <p>11 Q. -- is this the first time that Hernon</p> <p>12 Traversone had heard of this --</p> <p>13 A. I believe --</p> <p>14 Q. -- issue?</p> <p>15 A. I believe so. Yeah.</p> <p>16 Because I sent it to Jerry, who's my</p> <p>17 immediate boss, and when Jerry looked at the</p> <p>18 attachments, I guess --</p> <p>19 Q. Gotcha.</p> <p>20 A. -- and one of them was the affidavit from</p> <p>21 Andy, as we know, he immediately sent it to Hernon,</p> <p>22 and copied Len.</p> <p>23 Q. Gotcha.</p> <p>24 And so then what -- what is your -- how did</p> <p>25 you read this e-mail from Len Baccarro at the top?</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Right.</p> <p>2 A. -- he's not happy about the vendor, meaning</p> <p>3 Andy, he's going to cut him off for future fundings.</p> <p>4 Jerry says, yeah, it looks like that's what</p> <p>5 happened. This is what he verbally admitted to</p> <p>6 Kevin. And we're attempting to get him to</p> <p>7 acknowledge the same in writing so that we could use</p> <p>8 that to prosecute the customer, it says.</p> <p>9 Q. And I assume he means to, like, file suit</p> <p>10 against the customer?</p> <p>11 MR. STINE: Object to the form.</p> <p>12 A. Correct. Correct.</p> <p>13 Q. Okay.</p> <p>14 So does this -- do you recall any of these</p> <p>15 conversations in the conversations that you all were</p> <p>16 having at Ascentium about how to proceed regarding</p> <p>17 Ascentium -- I mean, the Phoenix --</p> <p>18 A. I do not.</p> <p>19 Q. -- agreement? Okay.</p> <p>20 THE COURT REPORTER: Did you say that</p> <p>21 Hernon --</p> <p>22 THE WITNESS: Hernon works for Ascentium</p> <p>23 Capital. He's the chief credit risk officer,</p> <p>24 executive VP.</p> <p>25 BY MR. MCKENZIE:</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. All right. Look at Exhibit 37. 2 (Exhibit 37 previously marked.) 3 A. Okay. 4 Q. If you'll just read the -- 5 A. Yeah. 6 Q. -- the top e-mail. 7 A. Okay. I think he was trying to just make a 8 joke. Heron. That's my take on it. 9 Q. So he -- he's just making that up? 10 A. The answer is I don't know. 11 Q. Okay. 12 A. I'm interpreting it as a joke. 13 Q. Okay. 14 A. Because I'm one of the top collectors 15 there, and I don't see that Len has any more 16 troubled loans than any other salesman -- 17 Q. Salesman? 18 A. -- salesperson, to be honest with you. 19 Unfortunately, they all left. 20 Q. All right. Next one is No. 38. 21 (Exhibit 38 previously marked.) 22 BY MR. MCKENZIE: 23 Q. You can just read that out loud. It's so 24 short. 25 A. (Reading) "Can we review a bunch of tier</p>	<p style="text-align: right;">Page 164</p> <p>1 Jerry, before we file suit against our debtor -- it 2 should be comma -- Adams Tank &amp; Lift, comma, and 3 Andy Adams, we want to send a letter giving all 4 parties a chance to make us a settlement offer. 5 Before telling Kevin it was okay to send it, I want 6 to run it by you, because Len said they had a 7 longstanding relationship with Adams. I wanted to 8 make sure Jerry was okay with the letter. 9 Jerry then e-mails me back, and he copies 10 Len, and he copies Heron, and he copies Tom Depping 11 who is the CEO of the company, telling Len that we 12 had previously made him aware, and were looking into 13 this. I want the letter to go out tomorrow. Please 14 review. I believe we need to stop doing any future 15 business with Adams. 16 Depping writes back -- again, it looks like 17 a joke. Where do we find these guys? And Len says, 18 blame my brother, meaning Richard. "Jerry and Tony, 19 give me a bit to digest all this." Again, he's 20 reminding us that Andy Adams is a top 10 Wayne 21 distributor. 22 Q. So, I mean, what -- what caused Ascentium's 23 focus to change from the beginning of May to the 24 beginning of June regarding to file suit against -- 25 A. Well, I believe that's the time that the</p>
<p style="text-align: right;">Page 163</p> <p>1 one vendors that we have had issues with? I'll be 2 in on Tuesday and Wednesday. Adams Tank, Pesco, 3 Guardian Fueling come to mind." 4 Q. And who is that e-mail between? Sorry. 5 A. Between Len and Jerry. My boss, Jerry 6 Noon. 7 Q. Okay. So do you know anything about Pesco? 8 A. I do not. 9 Q. Do you know anything about Guardian 10 Fueling? 11 A. No. I'm assuming that they're both 12 suppliers, sort of like Adams Tank &amp; Lift. 13 Q. Okay. So you don't have any -- no issues 14 ring a bell? 15 A. Correct. 16 Q. Okay. 17 All right. Let's go to Exhibit 39. 18 (Exhibit 39 previously marked.) 19 BY MR. MCKENZIE: 20 Q. Let's start from the bottom, and read up. 21 A. (Complies with request.) 22 Okay. 23 Q. So what's going on? 24 A. Well, the first e-mail from me to Jerry -- 25 Kevin wanted to send out a letter, and I says to</p>	<p style="text-align: right;">Page 165</p> <p>1 affidavit was signed by Andy referring to what he 2 had told you on the phone. 3 MR. STINE: And let me interject. I don't 4 have any problem with you testifying to discussions 5 you had internally with Mr. Noon or anybody else 6 within Ascentium, but in terms of -- if answering 7 the question would require you to disclose advice 8 that I gave, counsel, that I gave, we want to avoid 9 that subject matter. 10 So you could answer as it pertains to your 11 mindset and your discussions internally. 12 THE WITNESS: Okay. 13 MR. STINE: As opposed to discussions with 14 your counsel. 15 THE WITNESS: Got it. Okay. So could you 16 repeat the question again, please? 17 BY MR. MCKENZIE: 18 Q. Yes. 19 So what -- what shifted Ascentium's focus 20 from filing suit against the borrower, Phoenix 21 Petroleum, to filing suit against Adams Tank and 22 Andy Adams in the month of May? 23 A. I believe it was because of the affidavit 24 signed by Andy admitting to the facts that what we 25 had presented him with in the affidavit.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Okay.</p> <p>2 MR. STINE: And I'll state for the record</p> <p>3 that we did also sue the borrower, so it wasn't as</p> <p>4 if -- the question suggested the focus shifted from</p> <p>5 one to another, and, in reality, the borrower and</p> <p>6 the guarantors have also been sued.</p> <p>7 MR. MCKENZIE: That's true.</p> <p>8 BY MR. MCKENZIE:</p> <p>9 Q. So Mr. Adams was sued personally, and not</p> <p>10 one of the guarantors until maybe recently.</p> <p>11 Okay. This is an e-mail that I was going</p> <p>12 to -- No. 71, just to make things make sense.</p> <p>13 (Defendant's Exhibit 71 marked.)</p> <p>14 BY MR. MCKENZIE:</p> <p>15 Q. All right. So --</p> <p>16 MR. STINE: Off the record.</p> <p>17 (Off-the-record discussion.)</p> <p>18 MR. STINE: Back on the record.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. MCKENZIE:</p> <p>21 Q. All right. So this top e-mail is an e-mail</p> <p>22 from Steve (sic). Just kidding.</p> <p>23 Kevin Stine to Andy Adams, dated May 8,</p> <p>24 2015; correct? And you're cc'd; is that correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Do you remember speaking to -- the top</p> <p>2 e-mail from Len Baccaro to Jerry Noon, dated</p> <p>3 6/2/15, indicates:</p> <p>4 (Reading) Quote, "I'm good. I spoke to</p> <p>5 Tony. Thanks," period.</p> <p>6 Is that correct?</p> <p>7 A. That's what it says, but I don't recall my</p> <p>8 conversation with Len.</p> <p>9 Q. Okay.</p> <p>10 MR. MCKENZIE: There also appears to be an</p> <p>11 attachment to Exhibit 40, Kevin. I don't know if</p> <p>12 that's --</p> <p>13 THE WITNESS: Which e-mail?</p> <p>14 MR. STINE: (Inaudible.)</p> <p>15 THE COURT REPORTER: I'm sorry?</p> <p>16 MR. STINE: I was asking Mr. McKenzie which</p> <p>17 e-mail is he focusing on.</p> <p>18 MR. MCKENZIE: Exhibit 40, at the very end.</p> <p>19 MR. STINE: Okay.</p> <p>20 Okay. I can tell from the attachment</p> <p>21 description that it would be a WORD document that I</p> <p>22 had sent you, and you then forwarded it on to Jerry</p> <p>23 Noon.</p> <p>24 THE WITNESS: Okay.</p> <p>25 BY MR. MCKENZIE:</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Okay.</p> <p>2 And what does that appear to indicate in</p> <p>3 Mr. Stine's e-mail?</p> <p>4 A. It looks like Andy may have made a change</p> <p>5 or two to the affidavit that Kevin had sent him, or</p> <p>6 some revisions, and Kevin is telling Andy he doesn't</p> <p>7 have any comments regarding your revisions. That it</p> <p>8 has to be in his words, and he's telling him to</p> <p>9 print it, and sign it, notarize it, and send it back</p> <p>10 right away.</p> <p>11 Q. Okay. So the -- the e-mail that you sent</p> <p>12 to Jerry Noon that we're going to look for, which is</p> <p>13 Exhibit 31, that would not have been a signed copy</p> <p>14 of the affidavit; correct?</p> <p>15 A. What was the date of that?</p> <p>16 Q. 4/30/15.</p> <p>17 A. Correct. It couldn't have been signed on</p> <p>18 that date.</p> <p>19 Q. Okay. All right. Let's look at Exhibit 40</p> <p>20 in that notebook.</p> <p>21 (Exhibit 40 previously marked.)</p> <p>22 A. Okay.</p> <p>23 Q. So do you -- do you remember this</p> <p>24 correspondence, the backdrop to these e-mails?</p> <p>25 A. I do not specifically remember them. No.</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. All right. And let's go to Exhibit 46.</p> <p>2 (Exhibit 46 previously marked.)</p> <p>3 THE WITNESS: You done with this?</p> <p>4 BY MR. MCKENZIE:</p> <p>5 Q. Oh, sorry.</p> <p>6 MR. STINE: Yeah.</p> <p>7 A. Okay.</p> <p>8 Q. At the beginning of the deposition, you</p> <p>9 indicated you looked at some text messages. Was</p> <p>10 this what you looked at?</p> <p>11 A. I read them in Len's deposition.</p> <p>12 Q. Okay.</p> <p>13 A. I believe I had read these text messages</p> <p>14 some months ago.</p> <p>15 Q. Okay.</p> <p>16 A. Not recently.</p> <p>17 Q. Did any of these stick out as having any</p> <p>18 significance to you?</p> <p>19 A. I'd have to go through them again quickly.</p> <p>20 Q. Look at the June 4, 2015 text message on</p> <p>21 Page 2.</p> <p>22 A. Oh, I'm sorry.</p> <p>23 MR. STINE: June 4 or February 4?</p> <p>24 BY MR. MCKENZIE:</p> <p>25 Q. June 4.</p>

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<p style="text-align: right;">Page 170</p> <p>1 A. What year?</p> <p>2 Q. On Page 2.</p> <p>3 MR. STINE: There you go.</p> <p>4 A. Okay. I don't even know who's saying what</p> <p>5 to who.</p> <p>6 Q. Well, read -- just read the first -- just</p> <p>7 read it out loud.</p> <p>8 A. The June 4th text?</p> <p>9 Q. Yeah.</p> <p>10 A. (Reading) "Making sure you saw my text from</p> <p>11 Tuesday. I received yesterday, and I'm pissed. So</p> <p>12 am I. But honestly, my people don't want to force</p> <p>13 legal action. I know it wasn't intentional, but I</p> <p>14 can't stop this, and it's way over my head. Sorry</p> <p>15 to hear that, since I spent the past numerous years</p> <p>16 giving all my business to your firm, and finally got</p> <p>17 Wayne to sign you up. I'll have a conversation with</p> <p>18 them also. C'mon. I feel terrible about this,</p> <p>19 Andy. Sick to my stomach. They know the</p> <p>20 relationship, so that's why no lawsuit."</p> <p>21 Q. So if we go back to Exhibit 40 --</p> <p>22 A. Okay.</p> <p>23 Q. -- and the e-mail from Len to Jerry says:</p> <p>24 (Reading) "I'm good. I spoke to Tony.</p> <p>25 Thanks."</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Do you recall some sort of conversation</p> <p>2 that you had with Len Baccarro that would have led</p> <p>3 to him sending this text message to --</p> <p>4 A. Well, I probably explained to Len, you</p> <p>5 know, what happened on the Jackson job, and that's</p> <p>6 why he's telling Andy or asking Andy how could you</p> <p>7 have taken the \$216,000, and applied the money</p> <p>8 elsewhere.</p> <p>9 Q. So how do you -- how do you interpret this</p> <p>10 sentence:</p> <p>11 (Reading) "What proof do you have that you</p> <p>12 applied the final \$116K to the Cairo job?"</p> <p>13 What does that -- what do you think he's</p> <p>14 asking Andy there?</p> <p>15 A. He's asking Andy we had already paid you</p> <p>16 for the Cairo 1 job, so why are you taking \$116,000</p> <p>17 from the \$216,000, and telling us that you're</p> <p>18 applying it to Cairo, if you've already been paid</p> <p>19 for Cairo months before?</p> <p>20 He says, I've already paid you. You were</p> <p>21 already paid for that job. So why are you telling</p> <p>22 me that part of this \$216,000 went to that deal?</p> <p>23 Q. Right. And then to your knowledge, there</p> <p>24 wasn't any kind of written response to that?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Uh-huh.</p> <p>2 Q. Did you know that, two days later, he was</p> <p>3 going to text message Andy?</p> <p>4 A. Of course not.</p> <p>5 Q. Okay.</p> <p>6 And then go down on that same page to the</p> <p>7 November 18, 2015 text.</p> <p>8 A. Okay.</p> <p>9 Q. And read that out loud.</p> <p>10 A. (Reading) "Andy, c'mon, we can't settle for</p> <p>11 15 grand. Please delete this."</p> <p>12 Q. Do you know what he's referring to there?</p> <p>13 A. Do I know for sure? No.</p> <p>14 Q. What do you think he's referring to?</p> <p>15 A. I believe that Andy probably told Len I'll</p> <p>16 offer \$15,000 to you guys for this to go away, and</p> <p>17 Len is telling him there's no way that they're going</p> <p>18 to settle for \$15,000.</p> <p>19 Q. So why did he say please delete this?</p> <p>20 A. I have no idea.</p> <p>21 Q. Okay.</p> <p>22 And then if you go to the next page,</p> <p>23 February 4, 2016.</p> <p>24 A. (Complies with request.)</p> <p>25 Okay.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Okay.</p> <p>2 Let me see why I have this marked.</p> <p>3 All right. We're finished with these.</p> <p>4 Q. Okay. Now we're going to go over these --</p> <p>5 all right. So that, what I just handed you, is what</p> <p>6 was marked earlier today as Plaintiff's Exhibit 2.</p> <p>7 A. Correct.</p> <p>8 Q. What is this document?</p> <p>9 A. It's evidence of property insurance. It</p> <p>10 looks like Phoenix Petroleum is the insured. It</p> <p>11 lists the agency and the insurance company. It</p> <p>12 lists the dispensers and the canopy located at</p> <p>13 Cairo, Georgia. And it lists Ascentium Capital as</p> <p>14 additional interest.</p> <p>15 Q. And do you all -- does Ascentium Capital</p> <p>16 get property -- are they added as an additional</p> <p>17 insured under the borrower's property insurance?</p> <p>18 A. Yes. That's one of our requirements.</p> <p>19 Q. Okay.</p> <p>20 A. Yeah.</p> <p>21 Q. So this is just matter of course --</p> <p>22 A. (Nods head affirmatively.)</p> <p>23 Q. -- in your normal transactions?</p> <p>24 A. Standard.</p> <p>25 Q. Okay. All right.</p>

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<p>1 A. Who gets this? Me or you?</p> <p>2 Q. Just put it --</p> <p>3 MR. STINE: That stays in the middle.</p> <p>4 BY MR. MCKENZIE:</p> <p>5 Q. Right there.</p> <p>6 MR. STINE: And the court reporter takes</p> <p>7 all the original exhibits.</p> <p>8 BY MR. MCKENZIE:</p> <p>9 Q. Let's talk about this first, and then we'll</p> <p>10 talk -- which is kind of weird, but okay.</p> <p>11 Number 7.</p> <p>12 MR. STINE: For the record, Plaintiff's</p> <p>13 Exhibit 7?</p> <p>14 BY MR. MCKENZIE:</p> <p>15 Q. Yeah. Yeah. Plaintiff's Exhibit 7.</p> <p>16 Now, earlier, Mr. Stine said on the record</p> <p>17 that this is a document that you created; is that</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And what was the purpose of you creating</p> <p>21 this document? What does it show?</p> <p>22 A. It shows all of the transactions that</p> <p>23 Ascentium Capital did as -- financed all the Adams</p> <p>24 Tank &amp; Lift deals that Ascentium financed.</p> <p>25 Q. Okay. And so tell me -- so this is -- so</p>	<p>1 been terminated or paid off. It's still --</p> <p>2 Q. So "T" --</p> <p>3 A. There still is a balance.</p> <p>4 Q. So if a contract is marked "T" that's a</p> <p>5 good termination?</p> <p>6 A. Oh, yeah.</p> <p>7 Q. Okay.</p> <p>8 A. Yeah, yeah, yeah.</p> <p>9 Q. Okay. And so if it says, next to that,</p> <p>10 payments made 23 out of 60 on the two contracts</p> <p>11 marked "T", that means they just must have made --</p> <p>12 A. They paid off early.</p> <p>13 Q. Okay. And do the payments made -- does</p> <p>14 that payments made column indicate anything to you</p> <p>15 regarding whether any of the contracts are troubled</p> <p>16 loans?</p> <p>17 A. No. It just tells you the amount of</p> <p>18 payments made versus how many are totally -- totally</p> <p>19 due.</p> <p>20 Q. So does that show you how far into the term</p> <p>21 of the contract?</p> <p>22 A. Yeah. It tells me there 40 -- like the</p> <p>23 second one down is 47 months into it. They've made</p> <p>24 47 payments into a 60-month contract.</p> <p>25 Q. Gotcha. And with the exception of the</p>
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<p>1 how many -- how many contracts?</p> <p>2 A. There are 12 agreements on here, three of</p> <p>3 which are Phoenix.</p> <p>4 Q. Okay. Do you have any -- have you had any</p> <p>5 collection issues with any of the other contracts</p> <p>6 where Adams Tank &amp; Lift was involved?</p> <p>7 A. Not that I can remember.</p> <p>8 Q. Okay. What does the -- if you go one, two,</p> <p>9 three, four, five, six columns over, where it says</p> <p>10 status, what does that mean?</p> <p>11 A. "T" means the contract has been terminated,</p> <p>12 which would either mean it was paid off during the</p> <p>13 normal course, or it was paid off early.</p> <p>14 Q. Okay.</p> <p>15 A. Sometimes people want to get out of their</p> <p>16 contract, they make an early payoff.</p> <p>17 Q. Okay.</p> <p>18 A. So "T" would be terminated. "A" would mean</p> <p>19 active, meaning it's still an ongoing contract.</p> <p>20 Q. So beside -- the third down is Phoenix</p> <p>21 Petroleum 2116122, and beside where it says status</p> <p>22 there, that says active?</p> <p>23 A. Correct.</p> <p>24 Q. And why does that say active?</p> <p>25 A. Well, because it's not a contract that's</p>	<p>1 Phoenix Petroleum, these other customers are still</p> <p>2 actively making payments to Ascentium? Is that your</p> <p>3 testimony?</p> <p>4 A. I'm not saying that. I don't know. I</p> <p>5 haven't checked the --</p> <p>6 Q. Okay.</p> <p>7 A. -- if they were current or not.</p> <p>8 Q. But none have come across your desk as</p> <p>9 problems?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 MR. STINE: Let me ask you, do you feel</p> <p>13 like this document should be treated confidential?</p> <p>14 Because there are other customers listed here.</p> <p>15 THE WITNESS: I would think it should be.</p> <p>16 MR. STINE: Why don't we do that.</p> <p>17 For the record, we're designating that</p> <p>18 exhibit as confidential under the protective order</p> <p>19 that our judge has entered in our case.</p> <p>20 BY MR. MCKENZIE:</p> <p>21 Q. All right. Now let's talk about -- thank</p> <p>22 you. Well, quickly, on No. 7 --</p> <p>23 MR. STINE: By the way -- I'm sorry. You</p> <p>24 mentioned you were tired. Do you need a cup of</p> <p>25 coffee or something?</p>

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<p style="text-align: right;">Page 178</p> <p>1 THE WITNESS: No. Let's just forge ahead.  2 MR. MCKENZIE: We're getting close.  3 BY MR. MCKENZIE:  4 Q. So on Plaintiff's Exhibit 7, this is a  5 discussion of the Adams -- the customers where Adams  6 Tank &amp; Lift was involved; correct?  7 A. Right.  8 Q. Were any of these projects -- were there  9 any, that you know of, any changes or delays or  10 cancellation of any portions of any orders?  11 A. Not that I'm aware of.  12 Q. Okay.  13 All right. So let's talk about -- okay.  14 So these are different.  15 A. I have three copies of the same thing, I  16 think here. 21169156 three times. Right?  17 MR. STINE: What do you got? You know  18 what? I may have divided these up wrong. It's --  19 MR. MCKENZIE: Were there two?  20 MR. STINE: These are intended to be three  21 unique equipment finance agreements, but it's  22 possible that I handed you a stack of three of the  23 same, gave him three of the same, and kept three of  24 the same, instead of (indicating).  25 MR. MCKENZIE: Okay. I think that's what</p>	<p style="text-align: right;">Page 180</p> <p>1 you tell me about these agreements, since you  2 brought them with you.  3 So tell me what item does -- do these three  4 different agreements, marked as Plaintiff's Exhibit  5 6, what items do they coincide with on the  6 Defendant's Exhibit 48, which is the 30(b)(6) notice  7 of deposition?  8 A. I'd have to look at that again.  9 Q. Okay.  10 A. Which one was it? I'm sorry.  11 MR. STINE: So he's asking we produced  12 these documents to be responsive to what portion of  13 the notice.  14 THE WITNESS: Right. But I wanted to read  15 the --  16 BY MR. MCKENZIE:  17 Q. Or just read those, and see what you think  18 is -- they address.  19 A. See which number I think they address?  20 Q. Yeah.  21 A. Okay.  22 (Off-the-record discussion.)  23 A. Number 13.  24 MR. STINE: Yeah.  25 BY MR. MCKENZIE:</p>
<p style="text-align: right;">Page 179</p> <p>1 you did.  2 MR. STINE: Yeah. It looks like it.  3 MR. MCKENZIE: Yeah, because I have the  4 Oshun Group Inc., and you have Great Riviera of the  5 Nile (sic) or something.  6 THE WITNESS: Big River Enterprises, I  7 have.  8 MR. MCKENZIE: Or that.  9 THE WITNESS: Three times.  10 MR. STINE: And I have 100 Percent  11 Chiropractor Denver three times as well.  12 THE WITNESS: Three times, probably.  13 MR. MCKENZIE: Okay. So yeah, let's --  14 MR. STINE: All right. Let's see if we can  15 sort this out.  16 (Off-the-record discussion.)  17 MR. STINE: Okay.  18 BY MR. MCKENZIE:  19 Q. All right. So I need -- what order do you  20 have yours in? Because I need to switch mine.  21 A. Big River is first.  22 Q. Okay.  23 A. 100 Percent Chiropractic is second. And  24 the Oshun Group is third.  25 Q. All right. So let's -- I'm going to let</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. Let me see that.  2 All right. Read Number 13. Well -- yeah.  3 Read Number 13 for me, and then we'll talk about  4 those.  5 A. Okay.  6 (Reading) "The facts and circumstances of  7 any transaction involving Ascentium, which may be  8 used by Ascentium to show industry standards or  9 customary business practices of an equipment  10 supplier or vendor where a customer's order was  11 delayed, changed, or canceled, and the customer's  12 borrowed funds were returned to Ascentium instead of  13 being returned to the customer or otherwise applied  14 as directed or approved by the customer."  15 Q. Okay. All right. So let's talk about  16 Equipment Finance Agreement Number 2169156.  17 A. Okay.  18 Q. And this is marked as Plaintiff's Exhibit  19 6, and is also was marked by Mr. Stine as  20 confidential.  21 All right.  22 A. Okay.  23 Q. All right. So what is it about 2169156  24 that relates to Item Number 13 that we discussed?  25 A. Well, this looks like a contract that</p>

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<p style="text-align: right;">Page 182</p> <p>1 commenced in late 2015 or -- I should say probably 2 in December of 2015. 3 Q. For the record, is that after suit -- you 4 filed -- Ascentium filed suit against Adams Tank, 5 Andy Adams, and the -- 6 A. I'm trying to get my dates. Yes, I believe 7 suit had already been filed -- 8 Q. Okay. 9 A. -- by late 2015. 10 And the -- we financed \$98,365 of equipment 11 for this Big River Enterprises, the vendor or 12 supplier was Electrum Corporation. 13 Q. Okay. 14 A. Their invoice for the \$96,000. 15 And reading the notes, I don't know why the 16 deal was canceled. I had asked for an explanation. 17 Nobody was able to answer my question, but it does 18 say that the vendor refunded our 50 percent 19 pre-fund. We received a check directly from the 20 vendor back to Ascentium for \$48,182.99 on February 21 12th, 2016. 22 So something must have happened with Big 23 River and the vendor. I don't know what happened 24 between the two of them, but they decided not to 25 deliver the equipment, and the vendor gave us our 50</p>	<p style="text-align: right;">Page 184</p> <p>1 this deal was unwound." 2 And I told him why I needed this 3 information. 4 Q. If you look at the page immediately after 5 that -- 6 A. Uh-huh. 7 Q. -- what is that? 8 A. These are collection notes from our 9 collection system. 10 Q. And do you see that Len Baccarro is 11 included with that, do you know? Was he -- 12 A. Len was cc'd on this. 13 Q. Would that mean he's the salesman? 14 A. Not necessarily. It could be -- remember, 15 Len is head of several salesmen. 16 Q. Okay. 17 A. I believe he has five, six, seven salesmen 18 under him, in addition to being a salesman himself. 19 It's possible that Len was included, because this 20 was a deal that one of his salesmen under him 21 originated. 22 Q. Okay. All right. 23 Do you know if there was any type of 24 penalty applied to the customer in order to unwind 25 the deal or rescind the agreement?</p>
<p style="text-align: right;">Page 183</p> <p>1 percent pre-fund back, and whatever the payments the 2 customer may have made to us by that time. It was 3 most likely only one or two payments. I don't have 4 the payment history here. Was refunded back to them 5 also. 6 So the deal was rescinded, or like it never 7 occurred. 8 Q. Did you inquire as to why -- and I believe 9 you just said that you don't know why it was 10 unwound; is that correct? 11 A. Correct. If you look at -- on Page 1, 2 -- 12 Page 5, there's an e-mail from me dated August 5th, 13 2016, to Hernon, copied to Jerry. 14 (Reading) "Hernon, we did a 50 percent 15 pre-fund in December of 2015 on the above-referenced 16 deal. In February of 2016, the deal was unwound, 17 and the vendor refunded our 50 percent. In Jerry's 18 absence -- " 19 And Jerry was on vacation that week. 20 (Reading) "-- can you please look into 21 Aspire -- " 22 That's one of our programs that I don't 23 have access to. That's what the credit people use. 24 (Reading) "-- and see if there are any 25 notes or e-mails as to what transpired as to why</p>	<p style="text-align: right;">Page 185</p> <p>1 A. I do not know. 2 Q. Okay. 3 All right. Let's look at the second 4 agreement, which is Equipment Finance Agreement 5 Number -- oh, excuse me. Let's go back to this one. 6 Now, if I look at this form -- sorry. 7 We're back at the -- 8 A. That's okay. 9 Q. -- Big River Enterprise. This is Agreement 10 Number 2169156. In the bottom left corner of this 11 equipment finance agreement, it appears it states 12 140120151211; is that correct? 13 A. That's what it looks like without my 14 glasses. Yes. 15 Q. Okay. And what does that mean to you? 16 A. I don't know what the 1401 means. I'm -- 17 I'm guessing that the 2015 is the year, and 1211 is 18 the month and date that this agreement was -- came 19 into effect. I guess it was a revision of a prior 20 agreement. 21 Q. Okay. 22 A. That, to me, is a date down there, the 23 20151211. 24 Q. Okay. Now, on this equipment finance 25 agreement, do you see anywhere on here the language</p>

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<p style="text-align: right;">Page 186</p> <p>1 that applied to our agreements stating that they</p> <p>2 were non-cancellable agreements?</p> <p>3 A. I don't, and the reason I don't is because</p> <p>4 I can't read it. Sorry.</p> <p>5 Q. Is that the reason, or is it because it's</p> <p>6 not there?</p> <p>7 A. No, I really cannot read this fine print.</p> <p>8 Q. Let's see.</p> <p>9 A. I see a sentence here that says this EFA is</p> <p>10 irrevocable.</p> <p>11 Q. Where is that?</p> <p>12 A. On the left-hand side about the middle of</p> <p>13 the way down, all the way on the left-hand margin,</p> <p>14 "This EFA is irrevocable."</p> <p>15 See it, Kevin?</p> <p>16 MR. STINE: Yeah.</p> <p>17 A. And then read on.</p> <p>18 Q. Your obligation -- okay.</p> <p>19 So what -- can you decipher that in any</p> <p>20 way?</p> <p>21 A. Well, it's sort of like it says that the</p> <p>22 payments have to be made no matter what.</p> <p>23 Q. What does it actually say?</p> <p>24 A. (Reading) "Your obligation -- "</p> <p>25 If I can read it.</p>	<p style="text-align: right;">Page 188</p> <p>1 THE WITNESS: Yeah. This one's even worse.</p> <p>2 BY MR. MCKENZIE:</p> <p>3 Q. Yeah. Okay. Now, this is -- the next one</p> <p>4 I have in my stack is Equipment Finance Agreement</p> <p>5 Number 2176594. This is still part of Plaintiff's</p> <p>6 6; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Now, this debtor is -- appears to be</p> <p>9 100 Percent Chiropractic Denver, LLC?</p> <p>10 A. Looks like Denver 1 or Denver 5.</p> <p>11 Q. Five or something? Okay. Now --</p> <p>12 A. Denver 5.</p> <p>13 MR. STINE: If you work your way through</p> <p>14 the exhibit, there's a more legible --</p> <p>15 THE WITNESS: Yeah.</p> <p>16 MR. STINE: -- description of the debtor.</p> <p>17 MR. MCKENZIE: Okay. At the end? Okay.</p> <p>18 BY MR. MCKENZIE:</p> <p>19 Q. All right. So tell me why you included</p> <p>20 this as part of Plaintiff's Exhibit 6?</p> <p>21 A. Can I just go through it quickly, please?</p> <p>22 Q. Yeah.</p> <p>23 A. It appears that this is another agreement</p> <p>24 that went on the books around March of 2016. Not</p> <p>25 very long ago. Let's make sure I got the month</p>
<p style="text-align: right;">Page 187</p> <p>1 (Reading) "Your obligation to pay any -- to</p> <p>2 pay all amounts payable hereunder is absolute, and</p> <p>3 unconditional, and will not be -- "</p> <p>4 I can't read that.</p> <p>5 (Reading) " -- subject to any reduction."</p> <p>6 I can't read it. It's too small.</p> <p>7 Q. That's okay.</p> <p>8 A. I'm sorry.</p> <p>9 MR. STINE: Looks like it says:</p> <p>10 (Reading) "To set off Defendant's</p> <p>11 counterclaim, deferment, or recoupment for any</p> <p>12 reason."</p> <p>13 A. Right. Now that you say the words, I could</p> <p>14 decipher them.</p> <p>15 Q. Okay.</p> <p>16 MR. STINE: We're going to work on your</p> <p>17 company's choice of font.</p> <p>18 MR. MCKENZIE: Maybe when you get done with</p> <p>19 this litigation, you can --</p> <p>20 THE WITNESS: Afford a new scanner.</p> <p>21 MR. MCKENZIE: Give him a scanner.</p> <p>22 MR. STINE: I just say bigger type.</p> <p>23 THE WITNESS: Oh, my God.</p> <p>24 MR. STINE: Everybody likes to fit their</p> <p>25 agreements on one page. You know?.</p>	<p style="text-align: right;">Page 189</p> <p>1 correct. Where there were two suppliers involved.</p> <p>2 One was Biokinometrics. There's an invoice for</p> <p>3 \$14,450, and the other supplier was Custom X-ray</p> <p>4 Digital. There's an invoice for \$13,650. And the</p> <p>5 Biokinometrics vendor gave us back our entire</p> <p>6 \$14,450.</p> <p>7 Q. Wait. You got a --</p> <p>8 A. Check from them to Ascentium.</p> <p>9 Q. All right. So where are you in all this?</p> <p>10 A. I'm sorry.</p> <p>11 Q. That's okay.</p> <p>12 MR. STINE: Keep looking at the pages.</p> <p>13 It's got two checks.</p> <p>14 A. Further back.</p> <p>15 MR. STINE: See mine?</p> <p>16 A. After the two -- that's one invoice.</p> <p>17 Q. Okay.</p> <p>18 A. That's the second invoice. The second</p> <p>19 supplier.</p> <p>20 Q. Refund check. Is this handwriting at the</p> <p>21 bottom of these checks your handwriting?</p> <p>22 A. Yes. Where it says two refund checks from</p> <p>23 vendors. That's my handwriting.</p> <p>24 Q. Yeah. That looks familiar.</p> <p>25 A. So on the first vendor, for the \$14,450, it</p>

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<p style="text-align: right;">Page 190</p> <p>1 looks like we funded him 100 percent at the 2 beginning, in March of 2016, and on the Custom X-ray 3 vendor, we fund what looks like a 50 percent 4 pre-fund of \$6825, because that's half of their 5 invoice of \$13,650. 6 So -- and then we attach, after that, 7 there's a copy of the verbal verification, where the 8 customer is authorizing us for the funding. 9 And the last three pages are copies of -- 10 out of our collection note system. The third page 11 from the last, the collection note dated May 9th. 12 Q. All right. 13 A. There's an e-mail from Brian Abell. He's 14 one of our customer service reps to Bob Fisher. I 15 believe he was the salesperson on this deal. It 16 pertains to this customer. 17 (Reading) "Hey, Bob, the customer called in 18 stating that his loan was canceled. Do you know 19 anything about this?" 20 Q. So when he says the customer called in 21 stating his loan was canceled, does he mean the 22 borrower? 23 A. Yes. 24 Q. So in this case, the borrower told 25 Ascentium that it wanted to cancel the loan? Is</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. -- do we know who contacted Ascentium that 2 that deal was canceled? 3 A. I do not. No. 4 Q. Okay. 5 All right. The next one is -- okay. The 6 next one is Equipment Finance Agreement Number 7 2171292. The customer is the Oshun Group, Inc.; is 8 that correct? 9 A. Correct. 10 MR. STINE: It's spelled O-S-H-U-N. 11 A. Yeah. That's correct. Oshun, I guess, or 12 Oshun. 13 Q. All right. So review this, and then we'll 14 talk about why you brought this with you. 15 A. This looks like another deal that was only 16 on the books for a month or two, and the customer 17 advised that they did not want to go through with 18 it, and this one, we also received a full refund 19 from the vendor. 20 Q. And when did this agreement commence? 21 A. I don't have an exact date. It looks like 22 it was early in 2016. Probably January of 2016. 23 Q. What -- if you go to the 7th to the last 24 page, it's the beginning of the collection notes, I 25 believe.</p>
<p style="text-align: right;">Page 191</p> <p>1 that what happened in this case? 2 A. Yes. And it was maybe less than 60 days 3 after the deal went on the books. It was very early 4 in the process. 5 Q. And when he says the customer called in 6 stating his loan was canceled, do you know what -- 7 what allowed a customer to be able to just cancel 8 his loan? 9 A. I do not know. 10 Q. Okay. And then how -- how was the vendor 11 informed that the loan was canceled, and that it 12 needed to refund Ascentium? 13 A. I do not know. 14 Q. Okay. 15 A. I can make an assumption, but I don't know. 16 Q. All right. Well, what's your assumption? 17 A. My assumption is that Bob Fisher, the 18 salesman, called both of the vendors, and said the 19 customer doesn't want to go through with the deal. 20 The equipment, I guess, he couldn't get the 21 equipment in time, or it wasn't what he thought it 22 was going to be, and he wanted to cancel it. 23 Q. If we go back to the Big River Enterprises 24 deal -- 25 A. Okay.</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Notes? Okay. 2 Q. Yeah. 3 A. Okay. 4 Q. Under where it says payoff quote, read 5 that, and explain that to me. 6 A. This is an automated -- if somebody calls 7 in, and wants a payoff quote, and it looks like 8 somebody did on January 20th, somebody meaning the 9 customer, the debtor, they punch the account number 10 into the accounting system. It spits out a payoff 11 figure. 12 In this case, the payoff figure was, on the 13 first Line, \$16,689. All of this other verbiage 14 down here is this is a template. 15 Q. Okay. 16 A. So the only thing that populates in an 17 e-mail or a payoff quote, such as this, is the 18 figure. 19 Q. Okay. 20 A. And the date as to when it's good through. 21 Q. Okay. Are there any collection notes like 22 this for the Phoenix deals? 23 A. Collection notes? 24 Q. Like this? 25 A. Yes.</p>

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Page 194	<p>1 Q. There are?</p> <p>2 A. Yes.</p> <p>3 Q. Have those been provided?</p> <p>4 MR. STINE: I don't think so.</p> <p>5 MR. MCKENZIE: I don't think so either.</p> <p>6 MR. STINE: Are you asking for a copy?</p> <p>7 MR. MCKENZIE: If you have those. Yeah.</p> <p>8 BY MR. MCKENZIE:</p> <p>9 Q. Is there anything else you're hiding under</p> <p>10 a rock? I'm just kidding. Okay. Let's see.</p> <p>11 All right. So the next collection note,</p> <p>12 what is that about?</p> <p>13 A. What's the date on it? I'm sorry.</p> <p>14 Q. It's January 20th, 11:34 a.m.</p> <p>15 A. Oh. This is Patrick Small, who's a</p> <p>16 salesperson e-mailing our customer service</p> <p>17 department, can you please send along a payoff to</p> <p>18 Sandra Weise.</p> <p>19 Q. Okay.</p> <p>20 A. He's asking for the payoff, and then, as</p> <p>21 you could see five hours later, that's when the</p> <p>22 payoff was sent.</p> <p>23 Q. All right. So then if we look at the next</p> <p>24 page at the bottom, there appears to be an e-mail</p> <p>25 from Sandra Weise, January 20, 2016, 5:44 p.m.</p>	Page 196	<p>1 So this is the customer writing to our</p> <p>2 insurance people.</p> <p>3 (Reading) "I just faxed a number provided</p> <p>4 on Finance Agreement 2171292 to decline your</p> <p>5 coverage, and have provided my own certificate."</p> <p>6 So in other words, they're telling us they</p> <p>7 have their own insurance.</p> <p>8 Q. Okay.</p> <p>9 A. But then she goes on to say:</p> <p>10 (Reading) "I will never take possession of</p> <p>11 stated equipment, as it is being returned and</p> <p>12 refunded, and this account will be paid off in full</p> <p>13 as soon as a refund is received."</p> <p>14 Q. What does that mean?</p> <p>15 A. I'm not sure. I think what she means is,</p> <p>16 Ascentium will be made whole once the vendor returns</p> <p>17 the funds to you. I think that's what she means.</p> <p>18 It'll be paid in full, meaning Ascentium will get</p> <p>19 their money back, and that will be it.</p> <p>20 Q. Be done.</p> <p>21 A. And I will never have this equipment.</p> <p>22 Q. Okay. So then the e-mail right above that,</p> <p>23 January 28th --</p> <p>24 A. Right.</p> <p>25 Q. -- from Ascentium Assurant to customer care</p>
Page 195	<p>1 Do you see that? There's a little arrow</p> <p>2 pointing to it.</p> <p>3 A. Yes, I see it.</p> <p>4 Q. Is Sandra Weise the customer?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So read that.</p> <p>7 A. Hold on. Hold on. Let me check. That may</p> <p>8 be the vendor.</p> <p>9 She's the customer. She signed the</p> <p>10 contract.</p> <p>11 Q. Okay. So read that e-mail out loud.</p> <p>12 A. This is from Sandra to Ascentium, copying</p> <p>13 Patrick Small, who was the salesperson. I'm not</p> <p>14 sure who Rachel Stone is.</p> <p>15 (Reading) "I just faxed the number provided</p> <p>16 on Finance Agreement 2171292."</p> <p>17 Oh, I know who this is to. It went to</p> <p>18 Ascentium Assurant. Assurant is the insurance</p> <p>19 company we use.</p> <p>20 Q. Okay.</p> <p>21 A. If somebody doesn't provide insurance.</p> <p>22 Remember? And we provide force insurance if they</p> <p>23 don't cover the equipment, and then we'll bill them</p> <p>24 for the premium. Assurant.com is the company we use</p> <p>25 for the forced insurance.</p>	Page 197	<p>1 at Ascentium.</p> <p>2 A. Correct. That's the insurance company to</p> <p>3 our customer service department.</p> <p>4 Q. All right. And what does that say?</p> <p>5 A. (Reading) "Regarding this agreement, per</p> <p>6 customer, is returning the equipment. Please</p> <p>7 advise."</p> <p>8 In other words, the insurance people want</p> <p>9 to know what they should do.</p> <p>10 Q. So this is the first time that the</p> <p>11 collection or customer care folks at Ascentium know</p> <p>12 that the customer wants to return the equipment?</p> <p>13 A. It looks that way. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. And then customer service e-mails the</p> <p>16 salesman, Patrick Small.</p> <p>17 Q. To actual people?</p> <p>18 A. Right.</p> <p>19 Q. Okay.</p> <p>20 A. (Reading) "Please see below communications</p> <p>21 from the insurance department." So.</p> <p>22 Q. Okay. All right. So then -- all right.</p> <p>23 So then the next -- the next page, I think, is just</p> <p>24 like the end of the e-mail. And then this goes --</p> <p>25 A. Correct. Correct.</p>

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<p>1 Q. All right. So -- so read these e-mails on</p> <p>2 this page, and then we can talk about what's going</p> <p>3 on.</p> <p>4 A. So which page are you on? Which e-mail?</p> <p>5 MR. STINE: Second to the last page?</p> <p>6 MR. MCKENZIE: Yes. Kevin.</p> <p>7 A. The one on 1/29/16 at 10:54 a.m.?</p> <p>8 MR. STINE: Yeah.</p> <p>9 A. Where it says insurance resolved. Up at</p> <p>10 the top?</p> <p>11 Q. 10/24 --</p> <p>12 A. I'm not sure which one you're on.</p> <p>13 Q. Oh, yeah, yeah, yeah. That's the one. I'm</p> <p>14 sorry. Yes. If you start at the bottom.</p> <p>15 A. Yeah.</p> <p>16 Q. No, you started -- I don't know -- they're</p> <p>17 all out of whack.</p> <p>18 A. They are out of whack.</p> <p>19 MR. STINE: How come it's like 11:18 a.m.,</p> <p>20 10:07 a.m., and then 10:24 a.m.? Like they're not</p> <p>21 in chronological order.</p> <p>22 BY MR. MCKENZIE:</p> <p>23 Q. All right. Well, let's go in chronological</p> <p>24 order.</p> <p>25 MR. STINE: Well, just for clarification,</p>	<p>1 A. McAnarney.</p> <p>2 Q. -- McAnarney and Jerry Noon; is that</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So now let's go to the page right</p> <p>6 before it.</p> <p>7 A. And that was the afternoon of January 28th.</p> <p>8 Q. Okay. And this is the following day. So</p> <p>9 --</p> <p>10 MR. STINE: Oh, I figured it out.</p> <p>11 MR. MCKENZIE: What?</p> <p>12 MR. STINE: Did you figure it out? The</p> <p>13 time difference? So -- so the last page is the</p> <p>14 e-mail on January 28th from Ascentium Assurant to</p> <p>15 Kim McAnarney. And then the second to last page,</p> <p>16 this is where she forwards that message to Patrick</p> <p>17 Small, the salesman.</p> <p>18 THE WITNESS: Right.</p> <p>19 MR. STINE: And then when he replies, he</p> <p>20 replies at the very top.</p> <p>21 MR. MCKENZIE: Gotcha.</p> <p>22 MR. STINE: He replies:</p> <p>23 (Reading) I pasted in the response I sent</p> <p>24 along earlier."</p> <p>25 So this is him cutting and pasting --</p>
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<p>1 is it possible that the -- that the time stamp is</p> <p>2 affected by the time zone? So if somebody from</p> <p>3 Texas, for example, is e-mailing somebody on the</p> <p>4 east coast?</p> <p>5 THE WITNESS: I don't believe it is.</p> <p>6 MR. STINE: Okay.</p> <p>7 MR. MCKENZIE: That was a clever thought,</p> <p>8 though.</p> <p>9 MR. STINE: Well, yeah.</p> <p>10 BY MR. MCKENZIE:</p> <p>11 Q. All right. Well, to make matters more</p> <p>12 confusing, go to the very last page, because there's</p> <p>13 an e-mail that's dated January 28th.</p> <p>14 A. Okay.</p> <p>15 Q. Read that, and then we can talk about that.</p> <p>16 A. Okay. This is from --</p> <p>17 Q. Just read it out loud. It's so short.</p> <p>18 A. (Reading) "Hello. Please find attached a</p> <p>19 faxed note from the customer stating that they do</p> <p>20 not have the equipment in their possession, and</p> <p>21 never will. Please advise how you wish for us to</p> <p>22 proceed. If you have any questions, feel free to</p> <p>23 contact. Et cetera, et cetera, et cetera."</p> <p>24 Q. Okay. So that's -- that is an e-mail from</p> <p>25 Ascentium Assurant to Kim --</p>	<p>1 MR. MCKENZIE: Gotcha.</p> <p>2 THE WITNESS: An earlier e-mail from 14</p> <p>3 minutes earlier.</p> <p>4 MR. STINE: Yes.</p> <p>5 THE WITNESS: There you go.</p> <p>6 MR. MCKENZIE: Genius.</p> <p>7 BY MR. MCKENZIE:</p> <p>8 Q. All right. So let's read -- okay. Read</p> <p>9 Patrick Small's pasted response.</p> <p>10 A. Okay.</p> <p>11 (Reading) "I spoke with the customer the</p> <p>12 day that this communication took place. She had met</p> <p>13 with her accountant, and was frustrated by many</p> <p>14 things regarding our documentation. Specifically</p> <p>15 not providing a rate on the docs, paren, similar to</p> <p>16 her personal loans, close paren. I explained how</p> <p>17 commercial finance agreements are structured, and</p> <p>18 she did not like my explanation. I have spoken with</p> <p>19 the vendor this week, and they currently have her on</p> <p>20 the install schedule. They haven't heard from her</p> <p>21 since last Wednesday."</p> <p>22 Q. Okay. Does that indicate to you that the</p> <p>23 customer told Ascentium that it wanted to cancel the</p> <p>24 agreement?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 202</p> <p>1 Q. And then that Ascentium reached out to the</p> <p>2 vendor regarding it refunding the money?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 MR. MCKENZIE: If you all want to, can we</p> <p>6 take like a five-minute break?</p> <p>7 THE WITNESS: Sure.</p> <p>8 MR. MCKENZIE: I want to look at my notes,</p> <p>9 and just make sure there isn't some things that I</p> <p>10 wanted to ask you about.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. MCKENZIE: And we are almost finished.</p> <p>13 (Recess 4:50 p.m. - 5:02 p.m.)</p> <p>14 BY MR. MCKENZIE:</p> <p>15 Q. So are you able to provide any information</p> <p>16 regarding the policies and procedures of Ascentium</p> <p>17 related to funding projects?</p> <p>18 A. Not really. No.</p> <p>19 Q. Are you able to or are you familiar with --</p> <p>20 familiar enough with the policies and procedures</p> <p>21 related to oversight of finance projects after</p> <p>22 they're funded?</p> <p>23 A. I'm not sure. What do you mean by</p> <p>24 oversight of?</p> <p>25 Q. Well, like are you familiar with</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. How about the Ascentium's policies,</p> <p>2 procedures, and practices relating to perfecting</p> <p>3 security interests in collateral?</p> <p>4 A. That's not in my scope of work either.</p> <p>5 Q. Who would be that?</p> <p>6 A. The VSR would also get those. Those are</p> <p>7 the people who file the UCCs.</p> <p>8 Q. Is the VSR, is that Lon Thompson?</p> <p>9 A. Lon is head of a group of people that are</p> <p>10 VSRs.</p> <p>11 Q. Is Maria Negri a VSR?</p> <p>12 A. She is a VSR, but she works out of the</p> <p>13 Jersey office where Len is located.</p> <p>14 Q. Is Steve Shabazian a VSR?</p> <p>15 A. No. Steve is, I believe, a salesperson</p> <p>16 under Len.</p> <p>17 Q. Okay.</p> <p>18 Okay. And how about policies and</p> <p>19 procedures, practices of Ascentium related to credit</p> <p>20 and loan approval decisions?</p> <p>21 A. That's not in my scope of work either.</p> <p>22 Q. Who would be that?</p> <p>23 A. Hernon Traversone. As I said before, he's</p> <p>24 head of credit risk. And then he has several people</p> <p>25 under him in the credit department, all at various</p>
<p style="text-align: right;">Page 203</p> <p>1 Ascentium's policies, procedures, practices related</p> <p>2 to oversight of ongoing projects to make sure</p> <p>3 projects are proceeding --</p> <p>4 A. Definitely not.</p> <p>5 Q. -- as per the agreement?</p> <p>6 A. Definitely not.</p> <p>7 Q. Okay. So who would be the person in</p> <p>8 Ascentium that would be most familiar with those</p> <p>9 subjects?</p> <p>10 A. That would be the salesperson and the</p> <p>11 vendor service rep. As I said, they get the</p> <p>12 documents in, the vendor service reps, and then they</p> <p>13 move the deal along toward the funding. The booking</p> <p>14 and the funding of the deal.</p> <p>15 Q. Okay.</p> <p>16 A. So they would be the people following the</p> <p>17 deal along as it goes.</p> <p>18 Q. How about policies and procedures related</p> <p>19 to oversight of sales representatives, and also</p> <p>20 Ascentium's communication with the borrowers during</p> <p>21 the course of the project? Who would be familiar</p> <p>22 with those?</p> <p>23 A. The salesperson.</p> <p>24 Q. The same two salespersons and --</p> <p>25 A. And VSR, Vendor Service Rep.</p>	<p style="text-align: right;">Page 205</p> <p>1 different levels. Credit approval, et cetera.</p> <p>2 Q. And then policies, procedures, and</p> <p>3 practices related to debt collection efforts. That</p> <p>4 would be --</p> <p>5 A. That's me.</p> <p>6 Q. Okay. And we've talked about a lot of</p> <p>7 those today?</p> <p>8 A. Yeah.</p> <p>9 Q. And how about Ascentium's practices,</p> <p>10 policies, procedures related to financing options</p> <p>11 for gas, C-store, and car wash projects, which are</p> <p>12 similar to the projects that are the subject to</p> <p>13 Plaintiff's complaint?</p> <p>14 A. Not in my scope of work.</p> <p>15 Q. Who would that be?</p> <p>16 A. For that type of business, I would say it</p> <p>17 would be Len.</p> <p>18 Q. Okay.</p> <p>19 A. I mean Len doesn't make the policies and</p> <p>20 procedures, if that's what you're asking me. Len</p> <p>21 implements the policies and procedures.</p> <p>22 Q. Who makes the policies and procedures?</p> <p>23 A. People higher up than Len. The CEO, the</p> <p>24 CFO. I guess the board of directors.</p> <p>25 Q. Is that like Len's brother?</p>

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<p>1 A. Richard Baccarro is higher in the company 2 than Len. He's -- yes. He's -- 3 Q. Does he make policies and procedures? 4 A. I don't know for sure. 5 Q. Are you aware of -- well, would you be able 6 to testify regarding the sale or assignment of any 7 of the equipment financing agreements? 8 A. No, I would not. 9 Q. So who -- who would be the person that 10 would know that information? 11 A. Brian Wheeler. 12 Q. Who is Gary Houchins? 13 A. Gary is a credit person under Hernon. He's 14 in the credit department. 15 Q. And that's H-O-U-C-H-I-N-S? 16 A. Correct. 17 Q. So -- okay. 18 And then are you familiar with the policies 19 and procedures related to standard documents and 20 correspondence Ascentium uses with borrowers at the 21 initiation of transactions? 22 A. No, I'm not. 23 Q. You're not? 24 A. No. 25 Q. The ones we talked about earlier today?</p>	<p>1 I'm sure. 2 Q. So you all do have like an in-house general 3 counsel? 4 A. We do have an in-house general counsel, and 5 I'm sure he had a lot to do with the drafting of the 6 verbiage of all the documents. 7 Q. Okay. And these are all subject matters 8 that we just discussed from Number 14 in the 9 30(b)(6) notice of deposition, which was provided as 10 Defendant's Exhibit 48. 11 A. Okay. 12 Q. Okay. So -- okay. 13 See if you know this. At what point in a 14 project do the Ascentium salesmen get paid? 15 A. It's when the deal is booked. And what I 16 mean by that is, the vendor is funded, the deal goes 17 into the computer system, and we start the billing. 18 That's what we call the booking. It's the final 19 process. 20 Q. So is that -- is that standard practice in 21 the industry? 22 A. Yes. 23 Q. From a -- 24 A. Well, let me back up. I believe for the 25 majority of the finance companies it is. Obviously,</p>
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<p>1 The finance agreements and -- 2 A. Can you repeat the question, then? 3 Q. Yeah. 4 A. I may have misunderstood you. 5 Q. I was asking if you're familiar with the 6 policies, procedures, practices, and the standard 7 documents related to the, you know, the form 8 documents that you all have, and the correspondence 9 associated with the transactions, like the ones 10 involved in our case. 11 A. Yeah, I'm familiar with the documents 12 itself. I wasn't sure that's what you were asking 13 before. 14 Q. But you don't know why certain terms -- 15 A. I thought you meant the drafting of the 16 documents. No, I'm familiar with the documents once 17 they come back and are executed. 18 Q. Do you know why certain terms are in those 19 documents or the significance of certain terms? 20 A. Not really. 21 Q. Okay. 22 A. I mean, you know. 23 Q. So who would be that person? 24 A. Whoever drafted the document. I would 25 assume our general -- our in-house general counsel,</p>	<p>1 for Ascentium it is, and for Studebaker, when I was 2 with them, that's the way it worked. As soon as the 3 deal is booked, the commission goes to the 4 salesperson. I can't say 100 percent -- 5 Q. Okay. 6 A. -- across the industry, though. 7 Q. So from a collection guy standpoint, does 8 that create problems that you see on the back end? 9 A. Not at all. 10 Q. It doesn't? 11 A. No. 12 Q. Okay. Does that create a situation where 13 the salesmen don't pay attention to the job? 14 A. I wouldn't -- I wouldn't know. 15 Q. Okay. Do you know anything about the -- 16 the reduced credit requirements for loans to 17 customers that are under \$250,000? 18 A. I know some about -- somewhat about it, 19 yes. 20 Q. Do you know why Ascentium does that? 21 A. My belief is that they want to turn around 22 the credit decisions as quickly as possible, because 23 vendors -- suppliers and vendors are like that. 24 When they submit an application, they don't want it 25 to sit at the finance company for three days before</p>

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<p style="text-align: right;">Page 210</p> <p>1 they get an answer for their customer, whether</p> <p>2 they're approved or not.</p> <p>3 So by Ascentium doing -- reducing</p> <p>4 information that we need to do a deal under</p> <p>5 \$250,000, it gets -- it gets turned around in a</p> <p>6 matter of hours.</p> <p>7 Q. Do you see a higher percentage of -- do you</p> <p>8 see a higher percentage of troubled loans come out</p> <p>9 of that under \$250,000?</p> <p>10 A. I haven't noticed.</p> <p>11 Q. Okay.</p> <p>12 A. Not to my -- not to my knowledge.</p> <p>13 Q. And to your knowledge, how many deals has</p> <p>14 Ascentium financed with Ataollah Masoodzadehgan,</p> <p>15 Phoenix Petroleum, Great American Travel, Falcon, or</p> <p>16 any of his entities?</p> <p>17 A. Three.</p> <p>18 Q. Three? And just the three that are the</p> <p>19 subject matter of our lawsuit?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. That's what I thought.</p> <p>22 Are projects, just based on your knowledge,</p> <p>23 are projects, like the one that's the subject matter</p> <p>24 of our lawsuit, are those ever complete at the time</p> <p>25 of funding in the time that the equipment finance</p>	<p style="text-align: right;">Page 212</p> <p>1 A. He said, well, here are three examples,</p> <p>2 just off the top of my head.</p> <p>3 Q. Okay.</p> <p>4 A. So that's where he got those from.</p> <p>5 Q. If Ascentium sold any of the loans that are</p> <p>6 the subject matter of the complaint, would you know</p> <p>7 that?</p> <p>8 A. I don't know it at the time they're sold,</p> <p>9 but...</p> <p>10 Q. Would you know that now?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. Have you ever had a conversation or</p> <p>13 e-mail or text message or anything with -- other</p> <p>14 correspondence with anybody from Phoenix Petroleum?</p> <p>15 A. Have I ever spoken to anyone at Phoenix?</p> <p>16 Q. Yeah. Have you ever had any communication</p> <p>17 with anybody from Phoenix?</p> <p>18 A. I believe I have.</p> <p>19 Q. And do you remember who that was?</p> <p>20 A. I know it was not Ataollah. I've never</p> <p>21 spoken or --</p> <p>22 Q. Do you recall if it was Ed Schuler?</p> <p>23 A. I do not recall.</p> <p>24 Q. Have you spoken to Maria Negri about these</p> <p>25 transactions?</p>
<p style="text-align: right;">Page 211</p> <p>1 agreements are executed?</p> <p>2 A. Generally not.</p> <p>3 Q. So do the invoices that you get from the</p> <p>4 vendor -- well, first off, do you always get -- does</p> <p>5 Ascentium always get invoices from the supplier, or</p> <p>6 do they sometimes get those from the customer?</p> <p>7 A. No. They get them from the supplier.</p> <p>8 Q. Okay.</p> <p>9 A. The vendor.</p> <p>10 Q. And are those typically -- did those</p> <p>11 invoices typically show equipment or services that</p> <p>12 will be provided in the future?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 Were those projects that were produced as</p> <p>16 Plaintiff's Exhibit 6 that we discussed earlier,</p> <p>17 were those the only deals you could think of that</p> <p>18 had been unwound, and the vendor returned money to</p> <p>19 Ascentium?</p> <p>20 A. I didn't think of them. I had asked my</p> <p>21 boss, Jerry, if he had any off the top of his head</p> <p>22 that he could think of.</p> <p>23 Q. Okay.</p> <p>24 A. This was a couple of weeks ago.</p> <p>25 Q. Gotcha.</p>	<p style="text-align: right;">Page 213</p> <p>1 A. Yes.</p> <p>2 Q. And what did she have to say?</p> <p>3 A. I was asking her to look back at her</p> <p>4 e-mails to see if there were any e-mails between her</p> <p>5 and Andy Adams.</p> <p>6 Q. Okay.</p> <p>7 A. Going way back regarding delivery of</p> <p>8 equipment, et cetera, et cetera.</p> <p>9 Q. Did Maria indicate anything she thought</p> <p>10 happened with these transactions?</p> <p>11 A. I can't remember.</p> <p>12 Q. Okay.</p> <p>13 A. This was a while ago.</p> <p>14 Q. Did you talk to Gary Houchins about this?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. Have you talked to him at all about</p> <p>17 the lawsuit or anything?</p> <p>18 A. I have not.</p> <p>19 Q. Okay. Do you know why some deals are</p> <p>20 funded 90 percent up front and 10 percent on the</p> <p>21 back end, as in our case, versus 50 percent up</p> <p>22 front, and 50 percent on the back end?</p> <p>23 A. It has to do with the strength of the</p> <p>24 vendor or supplier, how we view them, because when</p> <p>25 we do business with any vendor, we always run a</p>

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<p style="text-align: right;">Page 214</p> <p>1 credit report on the company, see how long they've 2 been around, if they're reputable, whatever. So I 3 think that they -- I think that our credit 4 department puts them into categories, a tier one, 5 tier two, tier three. Tier ones would be to get the 6 best treatment such as Adams Tank &amp; Lift. They get 7 funded 90 percent up front, 10 percent shortly 8 thereafter, and-- well, sometimes 100 percent up 9 front. 10 Q. So does -- is it fair to say Ascentium uses 11 the funding percentages as a way to kind of hedge 12 risk? 13 A. Yeah. Because if they feel like they have 14 a risky vendor, they may pre-fund at nothing. 15 Q. Okay. 16 A. To make sure everything is in, and 17 installed, the customer is happy, before they let a 18 penny go out the door. 19 Q. Gotcha. Is it common for Ascentium to 20 enter into and execute these equipment finance 21 agreements with borrowers that they never see 22 personally? 23 A. Sure. 24 Q. Okay. Do you know whether Phoenix 25 Petroleum was a strong credit package?</p>	<p style="text-align: right;">Page 216</p> <p>1 Ascentium will do that for borrowers? 2 A. I think we do it -- I can't answer the 3 question. I don't know. 4 Q. Well, why do you think? 5 A. I think we do it more to keep the vendor 6 happy, because our relationships, you know, are 7 vendor driven. Our business is driven by the 8 vendors. The suppliers, they're the ones who bring 9 us the business. 10 So if we have a good relationship with the 11 vendor, and he doesn't have -- if he's never 12 delivered anything, he shouldn't have an issue 13 giving us back our money. 14 Q. Right. 15 A. Especially if we've already paid him for 16 something that he can't deliver. 17 Q. So do you know if there is a written or 18 implied policy relating to how long a project can go 19 without final funding? 20 A. I do not know. 21 Q. Okay. Do you know if the initial Cairo -- 22 the Cairo 1 and 2 were split into two projects so 23 that one of them -- one or both of them could be 24 sold separately? Do you know if that was ever 25 discussed?</p>
<p style="text-align: right;">Page 215</p> <p>1 A. I do not know. 2 Q. Okay. What does it take to -- we talked 3 about some examples where a deal was unwound. What 4 does it take for Ascentium to unwind one of these 5 deals? I mean, what -- how big of a process is 6 that? 7 A. I really don't know, because we don't do it 8 all that often, but it would have to happen early in 9 the game, so to speak, where only one or two or 10 maybe three payments were made by the customer. And 11 everybody would have to be in agreement to do it. 12 The vendor would have to tell us, I'll give 13 you 100 percent of your money back. I haven't 14 delivered a thing. The customer would say, I made 15 two payments. Are you giving those back to me? And 16 Ascentium would say yes. 17 They get their two payments back, the 18 vendor gives us back our full amount of whatever we 19 had funded them. Everybody goes away. It's, in 20 effect, rescinded. 21 Q. Okay. 22 A. Like it never happened. Everyone's made 23 whole in a situation like that. And again, it's 24 always early in the process. 25 Q. And is -- and why -- do you know why</p>	<p style="text-align: right;">Page 217</p> <p>1 A. That was the case, from what I understand. 2 Yes. 3 Q. Okay. 4 All right. Are there any other documents 5 that you can think of during the course of this 6 deposition that we don't have that you might should 7 get Kevin to give me? 8 A. The only thing that comes to mind is what 9 you mentioned before. 10 Q. Okay. 11 A. The collection notes. 12 Q. Okay. 13 Did you provide all the Ascentium documents 14 to Mr. Stine? 15 A. What? Collection notes? 16 Q. Or just -- did you -- when we sent him the 17 document request -- 18 A. Uh-huh. 19 Q. -- did you provide all the documents? Are 20 you his contact at Ascentium? 21 A. Yes. I think I probably provided 90 22 percent of the stuff. 23 Q. Okay. 24 A. And maybe Jerry sent him some stuff. 25 Q. Gotcha.</p>

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Page 218	<p>1 A. Maria maybe, but I would have done most of</p> <p>2 it.</p> <p>3 Q. So you would be the guy to know if there's</p> <p>4 something lingering out there --</p> <p>5 A. Correct.</p> <p>6 Q. -- that we don't have?</p> <p>7 Okay.</p> <p>8 Do you know what Len Baccarro's -- like how</p> <p>9 he gets paid, and how much he gets paid?</p> <p>10 A. I have no -- no idea.</p> <p>11 Q. Okay.</p> <p>12 A. Couldn't even take a stab at it.</p> <p>13 Q. Do you ever come across deals where an</p> <p>14 equipment supplier will refund a customer a deposit</p> <p>15 it paid after financing?</p> <p>16 A. No. Never.</p> <p>17 Q. Okay. Do you know Dave Lacowl (phonetic)</p> <p>18 or Alex Davinivitis (phonetic) at Wayne?</p> <p>19 A. I do not.</p> <p>20 Q. You don't?</p> <p>21 Do you know or have you ever spoken to Ted</p> <p>22 Racagli (phonetic) or Brad Perrier (phonetic) at</p> <p>23 Mansville Oil (phonetic)?</p> <p>24 A. No.</p> <p>25 Q. Who's Scott Linton?</p>	Page 220	<p>1 A. Correct.</p> <p>2 Q. All right.</p> <p>3 A. Don't tell me. Is that it?</p> <p>4 MR. MCKENZIE: Finished.</p> <p>5 THE WITNESS: All right. Terrific.</p> <p>6 MR. MCKENZIE: Thank you very much for all</p> <p>7 of your time.</p> <p>8 (Thereupon, the deposition concluded.)</p> <p>9 (Signature reserved.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 219	<p>1 A. I believe Scott Linton, at one time, was a</p> <p>2 salesperson.</p> <p>3 Q. At Ascentium?</p> <p>4 A. At Ascentium. I do not believe he's any</p> <p>5 longer with the company.</p> <p>6 Q. And I think you mentioned earlier. You</p> <p>7 did. Have you ever spoken to John Kennedy,</p> <p>8 Phoenix's receiver?</p> <p>9 A. It was either Mr. Kennedy or -- is he the</p> <p>10 receiver?</p> <p>11 Q. Yeah. John Kennedy is the receiver.</p> <p>12 A. Who's the attorney for the --</p> <p>13 Q. Jack Nichols.</p> <p>14 A. I think I've spoken to both of them.</p> <p>15 Q. Okay.</p> <p>16 A. But I think most of our conversations was</p> <p>17 with the attorney, Mr. Nichols.</p> <p>18 Q. And what --</p> <p>19 A. Early on in the game, when we first learned</p> <p>20 about the receivership.</p> <p>21 Q. Okay. And so was that during the time</p> <p>22 period you were investigating what happened?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And we had -- we talked about that</p> <p>25 earlier.</p>	Page 221	<p>1 The following reporter and firm disclosures were</p> <p>2 presented at this proceeding for review by counsel:</p> <p>3</p> <p style="text-align: center;">REPORTER DISCLOSURES</p> <p>4</p> <p style="text-align: center;">The following representations and</p> <p>5 disclosures are made in compliance with Georgia Law,</p> <p>6 more specifically:</p> <p style="text-align: center;">Article 10(B) of the Rules and Regulations</p> <p>7 of the Board Of Court Reporting (disclosure forms)</p> <p>8 OCGA 9-11-28(c) (disqualification of reporter for</p> <p>9 financial interest); OCGA 15-14-37(a) and (b)</p> <p>10 (prohibitions against contracts except on a</p> <p>11 case-by-case basis).</p> <p>12 - I am a certified reporter in the State of</p> <p>13 Georgia.</p> <p>14</p> <p>15 - I am a subcontractor for Tiffany Alley</p> <p>16 Veritext.</p> <p>17 - I have been assigned to make a complete</p> <p>18 and accurate record of these proceedings.</p> <p>19</p> <p>20 - I have no relationship of interest in the</p> <p>21 matter on which I am about to report which would</p> <p>22 disqualify me from making a verbatim record or</p> <p>23 maintaining my obligation of impartiality in</p> <p>24 compliance with the Code of Professional Ethics.</p> <p>25</p> <p>26 - I have no direct contract with any party</p> <p>27 in this action and my compensation is determined</p> <p>28 solely by the terms of my subcontractor agreement.</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>

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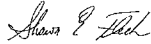
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<p style="text-align: right;">Page 222</p> <p>1 FIRM DISCLOSURES</p> <p>2 - Tiffany Alley Veritext was contacted to</p> <p>3 provide reporting services by the noticing or</p> <p>4 taking attorney in this matter.</p> <p>5 - There is no agreement in place that is</p> <p>6 prohibited by OCGA 15-14-37(a) and (b). Any</p> <p>7 case-specific discounts are automatically</p> <p>8 applied to all parties, at such time as any</p> <p>9 party receives a discount.</p> <p>10 - Transcripts: The transcript of this</p> <p>11 proceeding as produced will be a true, correct, and</p> <p>12 complete record of the colloquies, questions, and</p> <p>13 answers as submitted by the certified court</p> <p>14 reporter.</p> <p>15 - Exhibits: No changes will be made to the</p> <p>16 exhibits as submitted by the reporter, attorneys, or</p> <p>17 witnesses.</p> <p>18 - Password-Protected Access: Transcripts</p> <p>19 and exhibits relating to this proceeding will be</p> <p>20 uploaded to a password-protected repository, to</p> <p>21 which all ordering parties will have access.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 224</p> <p>1 TIFFANY ALLEY, A VERITEXT COMPANY</p> <p>2 FIRM CERTIFICATE AND DISCLOSURE</p> <p>3</p> <p>4 Tiffany Alley Veritext represents that the</p> <p>5 foregoing transcript as produced by our Production</p> <p>6 Coordinators, Georgia Certified Notaries, is a true,</p> <p>7 correct and complete transcript of the colloquies,</p> <p>8 questions and answers as submitted by the certified</p> <p>9 court reporter in this case. Tiffany Alley Veritext</p> <p>10 further represents that the attached exhibits, if any,</p> <p>11 are a true, correct and complete copy as submitted by</p> <p>12 the certified reporter, attorneys or witness in this case;</p> <p>13 and that the exhibits were handled and produced exclusively</p> <p>14 through our Production Coordinators, Georgia Certified</p> <p>15 Notaries. Copies of notarized production certificates</p> <p>16 related to this proceeding are available upon request to</p> <p>17 litsup-ga@veritext.com.</p> <p>18</p> <p>19 Tiffany Alley Veritext is not taking this deposition</p> <p>20 under any relationship that is prohibited by</p> <p>21 OCGA 15-14-37(a)and(b). Case-specific discounts are</p> <p>22 automatically applied to all parties, at such time as any</p> <p>23 party receives a discount. Ancillary services such as</p> <p>24 calendar and financial reports are available to all</p> <p>25 parties upon request.</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p>
<p style="text-align: right;">Page 223</p> <p>1 CERTIFICATE</p> <p>2 STATE OF GEORGIA:</p> <p>3 COUNTY OF FULTON:</p> <p>4</p> <p>5 I hereby certify that the foregoing</p> <p>6 transcript was taken down, as stated in the caption,</p> <p>7 and the colloquies, questions and answers were</p> <p>8 reduced to typewriting under my direction; that the</p> <p>9 transcript is a true and correct record of the</p> <p>10 evidence given upon said proceeding.</p> <p>11 I further certify that I am not a relative</p> <p>12 or employee or attorney of any party, nor am I</p> <p>13 financially interested in the outcome of this</p> <p>14 action.</p> <p>15</p> <p>16 I have no relationship of interest in this</p> <p>17 matter which would disqualify me from maintaining my</p> <p>18 obligation of impartiality in compliance with the</p> <p>19 Code of Professional Ethics.</p> <p>20 I have no direct contract with any party in</p> <p>21 this action and my compensation is based solely on</p> <p>22 the terms of my subcontractor agreement.</p> <p>23 Nothing in the arrangements made for this</p> <p>24 proceeding impacts my absolute commitment to serve</p> <p>25 all parties as an impartial officer of the court.</p> <p>26</p> <p>27 This the 12th day of September, 2016.</p> <p>28</p> <p>29 </p> <p>30</p> <p>31 Shawn E. Fleck, RPR, CCR #2859</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>	<p style="text-align: right;">Page 225</p> <p>1 TO: Kevin Stine</p> <p>2 Re: Signature of Deponent Conf. 30(b)(6) Anthony Campisciano</p> <p>3 Date Errata due back at our offices: 10/12/2016</p> <p>4</p> <p>5 Greetings:</p> <p>6 The deponent has reserved the right to read and sign.</p> <p>7 Please have the deponent review the attached PDF</p> <p>8 transcript, noting any changes or corrections on the</p> <p>9 attached PDF Errata. The deponent may fill out the</p> <p>10 Errata electronically or print and fill out manually.</p> <p>11</p> <p>12 Once the Errata is signed by the deponent and notarized,</p> <p>13 please mail it to the offices of Tiffany Alley (below).</p> <p>14</p> <p>15 When the signed Errata is returned to us, we will seal</p> <p>16 and forward to the taking attorney to file with the</p> <p>17 original transcript. We will also send copies of the</p> <p>18 Errata to all ordering parties.</p> <p>19</p> <p>20 If the signed Errata is not returned within the time</p> <p>21 above, the original transcript may be filed with the</p> <p>22 court without the signature of the deponent.</p> <p>23</p> <p>24</p> <p>25 Please send completed Errata to:</p> <p>26 Tiffany Alley Veritext</p> <p>27 1075 Peachtree Street NE, #3625</p> <p>28 Atlanta, GA 30309</p> <p>29 (770) 343-9696</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>

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<p style="text-align: right;">Page 226</p> <p>1 ERRATA</p> <p>2 I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that</p> <p>3</p> <p>4 ___ There are no changes noted.</p> <p>5 ___ The following changes are noted:</p> <p>6</p> <p>Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure and/or OCGA 9-11-30(e), any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.</p> <p>10</p> <p>11 Page ___ Line ___ Change _____</p> <p>12 _____</p> <p>13 Reason for change _____</p> <p>14 Page ___ Line ___ Change _____</p> <p>15 _____</p> <p>16 Reason for change _____</p> <p>17 Page ___ Line ___ Change _____</p> <p>18 _____</p> <p>19 Reason for change _____</p> <p>20 Page ___ Line ___ Change _____</p> <p>21 _____</p> <p>22 Reason for change _____</p> <p>23 Page ___ Line ___ Change _____</p> <p>24 _____</p> <p>25 Reason for change _____</p>	
<p style="text-align: right;">Page 227</p> <p>1 Page ___ Line ___ Change _____</p> <p>2 _____</p> <p>3 Reason for change _____</p> <p>4 Page ___ Line ___ Change _____</p> <p>5 _____</p> <p>6 Reason for change _____</p> <p>7 Page ___ Line ___ Change _____</p> <p>8 _____</p> <p>9 Reason for change _____</p> <p>10 Page ___ Line ___ Change _____</p> <p>11 _____</p> <p>12 Reason for change _____</p> <p>13 Page ___ Line ___ Change _____</p> <p>14 _____</p> <p>15 Reason for change _____</p> <p>16 Page ___ Line ___ Change _____</p> <p>17 _____</p> <p>18 Reason for change _____</p> <p>19 _____</p> <p>20 _____</p> <p style="text-align: center;">DEPONENT'S SIGNATURE</p> <p>21 _____</p> <p>Sworn to and subscribed before me this ___ day of _____,</p> <p>22 _____</p> <p>23 _____</p> <p>24 NOTARY PUBLIC</p> <p>25 My Commission Expires: _____</p>	

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